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**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BHARATKUMAR G. THAKKER, :	
et al., :	NO. 1:CV-20-0480
Petitioner-Plaintiffs :	
	: (Jones, J.)
v. :	
	:
CLAIR DOLL, in his official :	
Capacity as Warden of York :	
County Prison, et al., :	
Respondents-Defendants :	(Filed Electronically)

**RESPONDENTS' RESPONSE AND OPPOSITION
TO PETITION FOR WRIT OF HABEAS CORPUS AND
MOTION FOR TEMPORARY RESTRAINING ORDER AND OR
PRELIMINARY INJUNCTION**

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INTRODUCTION

Petitioners claim a constitutional violation necessitating their immediate release from custody because they suffer from medical conditions that make them more susceptible to COVID-19 and they are exposed to a “heightened risk” of contracting the virus if they were to remain in detention.¹

Petitioners speculate that it is “highly likely” that COVID-19 will reach all three detention facilities that house the Petitioners and their continued detention, under any circumstances, would be unconstitutional because they are particularly vulnerable should they become infected. Doc. 12 (Br. In Support). Notwithstanding the comprehensive steps ICE has taken to prevent that eventuality and the lack of a single confirmed case of COVID-19 at York, Pike or Clinton County, Petitioners ask this Court to find that detention of anyone in immigration detention over forty-five and/or suffering from any number of medical conditions is per se

¹ Pursuant to 28 U.S.C. § 2243, [t]he writ, or order to show cause shall be directed to the person having custody of the person detained. These provisions contemplate a proceeding against some person who has the immediate custody of the party detained, with the power to produce the body of such party before the court or judge.... *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004). Thus, for purposes of a habeas action, the petitioner’s custodian is the warden of the institution holding the petitioner. (*Id.* at 442.) In the instant habeas case, the only appropriate respondents are Wardens Craig A. Lowe, Clair Doll, and Angela Hoover. As such, Wardens Craig A. Lowe, Clair Doll, and Angela Hoover should be substituted as the sole respondents and Simona Flores-Lund, Matthew T. Albence, ICE, and Chad Wolfe should be dismissed from the habeas.

unconstitutional. Moreover, to remedy this alleged constitutional violation, Petitioners ask the Court to order their immediate release from facilities with no confirmed COVID-19 cases to the general public where Petitioners themselves acknowledge “COVID-19 is overwhelming local healthcare systems.” Doc. 12 (Br. In Support) at 9.

The Court should decline to order the extraordinary preliminary relief Petitioners seek. First, Petitioners do not have a cognizable injury, much less an irreparable one. Second, habeas relief is inappropriate for Petitioners’ conditions of confinement claims, which must be brought under the Civil Rights Statute. Finally, because Petitioners’ constitutional claims lack merit and because the balance of equities and public interest tilt against granting a temporary restraining order, Respondents respectfully request the Court deny Petitioners’ motion.²

² Petitioners request the Court intervene because of the “growing recognition among courts . . . that releasing vulnerable detainees is the only way to protect them.” Doc. 12 (Br. In Support) at 2. In support of this position, Petitioners rely on *Xochihua-Jaimes v. Bar*, Order, No. 18-71460 (9th Cir. Mar. 23, 2020). *Id.* Respondents note that the Ninth Circuit re-issued that decision and revoked the notice of publication. Thus, this case is not published and the Court should assign an appropriate weight of authority. Also, the court did not consider the conditions at the Adelanto detention facility where Petitioner is detained, whether there were any confirmed cases of COVID-19, or whether DHS has implemented any safety precautions to address COVID-19 at Adelanto.

In addition, in *Matter of Extradition of Toledo Manrique*, No. 19MJ71055MAG1TSH, 2020 WL 1307109 (N.D. Cal. Mar. 19, 2020), (Doc 12 (Br. In Support) at 3), the court released a pre-trial detainee not solely due to COVID-19, but because of a treaty obligation to Peru. *Toledo*, 2020 WL 1307109, at *1. The court also indicated release could only occur “[w]hen the \$500,000 in cash bail is

FACTUAL BACKGROUND

York County Prison, and Clinton and Pike County Correctional Facilities are Inter-Governmental Service Agreement (IGSA) facilities that house ICE detainees. Ex. 1, Declaration of Jennifer Moon at ¶ 2. ICE Health Services Corps (IHSC) Field Medical Coordinators (FMC) ensure that the provisions of medical care by contractors to the ICE detainees within the IGSA facilities meets detention standards, as required by IGSA contract. *Id.* ¶ 3. The FMCs do not provide hands-on care or direct care with the IGSA facilities but monitor the medical care and services provided by the contract facilities. *Id.* Medical staff at the contract facilities are directly responsible for medical care at the facility. *Id.* IHSC comprises a multidisciplinary workforce that consists of U.S. Public Health Service Commissioned Corps (USPHS) officers, federal civil servants, and contract health professionals. *Id.* ¶ 4.

posted and his wife surrenders her passports.” *Toledo*, 2020 WL 1307109, at *1,*2. Thus, his release was not without security or entirely premised on the COVID-19 outbreak.

Moreover, although Fellela’s request for release was premised on his “medical vulnerability” and the COVID-19 outbreak, the court “determined that Fellela is subject to release in accordance with the explicit requirements of 18 U.S.C. § 3143(a)(1)” and held that it “need not further determine whether the COVID-19 virus presents a ‘compelling reason’ for release pursuant to 18 U.S.C. § 3142(i) or an ‘exceptional reason’ for release pursuant to 18 U.S.C. § 3145(c), or the extent to which these statutes apply at all to a defendant who is subject to release pending sentencing under 18 U.S.C. § 3143(a)(1).” *United States v. Fellela*, No. 3:19-cr-079, 2020 U.S. Dist. LEXIS 49198, at *1. (D. Conn. Mar. 20, 2020).

Since the initial reports of COVID-19, ICE epidemiologists have been tracking the outbreak, regularly updating infection prevention and control protocols, and issuing guidance to field staff for the screening and management of potential exposure among detainees. *Id.* ¶ 5. Moreover, ICE has maintained a pandemic workforce protection plan since February 2014, which was last updated in May 2017. Ex. 2, Declaration of Ada I. Rivera ¶ 6. This plan provides specific guidance for biological threats such as COVID-19. *Id.* ICE instituted applicable parts of the plan in January 2020 upon the discovery of the potential threat of COVID-19. *Id.* ¶ 6. IHSC has also been in contact with relevant offices within the Department of Homeland Security, and in January 2020, the DHS Workforce Safety and Health Division provided DHS components additional guidance to address assumed risks and interim workplace controls, including the use of N95 masks, available respirators, and additional personal protective equipment. *Id.* ¶ 7.

As a precautionary measure, ICE has temporarily suspended social visitation and limited professional visits to non-contact visits in all detention facilities. Ex 1, Moon Decl. ¶ 15. York, Clinton, and Pike County are screening all staff and vendors when they enter the facilities –including body temperature. *Id.* ¶ 16.

In testing for COVID-19, IHSC is also following guidance issued by the Centers for Disease Control (CDC) to safeguard those in its custody and care. *Id.* ¶ 6. York, Clinton, and Pike facilities are screening all detainee intakes when they

enter the facility including travel history, medical history, and checking body temperatures. *Id.* ¶ 17. Each detainee is also screened for disabilities upon admission. *Id.* ¶ 7. Identified disabilities are further elevated and reasonable accommodations are provided as medically appropriate. *Id.* At York, Clinton, and Pike County, during intake medical screenings, routine comprehensive health assessments, or screenings occasioned by detainee complaints, detainees are assessed for fever and respiratory illness, are asked to confirm if they have had close contact with a person with laboratory-confirmed COVID-19 in the past 14 days, and whether they have traveled from or through areas with sustained community transmission in the past two weeks. *Id.* ¶ 8. The detainee's responses and the results of these assessments will dictate whether to monitor or isolate the detainee. *Id.* ¶ 9. Those detainees that present symptoms compatible with COVID-19 are placed in isolation, where they are tested. *Id.* If testing is positive, they will remain isolated and treated. *Id.* In case of any clinical deterioration, detainees will be referred to a local hospital. *Id.*

In cases of known exposure to a person with confirmed COVID-19, asymptomatic detainees are placed in cohorts with restricted movement for the duration of the most recent incubation period (14 days after most recent exposure to an ill detainee) and are monitored daily for fever and symptoms of respiratory illness. *Id.* ¶ 10. Cohorting is an infection prevention strategy which involves housing detainees together who were exposed to a person with an infectious organism but

are asymptomatic. *Id.* This practice lasts for the duration of the incubation period of 14 days, because individuals with these and other communicable diseases can be contagious before they develop symptoms and can serve as undetected source patients. *Id.* Those that show onset of fever and/or respiratory illness are referred to a medical provider for evaluation. *Id.* Cohorting is discontinued when the 14-day incubation period completes with no new cases. *Id.* Per ICE policy, detainees diagnosed with any communicable disease who require isolation are placed in an appropriate setting in accordance with CDC or state and local health department guidelines. *Id.* The York, Clinton, and Pike County facilities have identified housing units for the quarantine of patients who are suspected of or test positive for COVID-19 infection. *Id.* ¶ 19.

The York, Clinton, and Pike County facilities provide education on COVID-19 to staff and detainees to include the importance of hand washing and hand hygiene, covering coughs with the elbow instead of with hands, and requesting sick call if they feel ill. *Id.* ¶ 18. The York, Clinton, and Pike County Prisons all have populations within their approved capacities and are not overcrowded. *Id.* ¶ 13.

Each facility – York, Clinton, and Pike – manage both male and female detainees. *Id.* ¶ 11. Each provides daily access to sick calls in a clinical setting and has onsite medical staff 24 hours a day, seven days a week with the ability to admit patients to the local hospital for medical, specialty, or mental health care. *Id.* As of

9:30 a.m. on March 27, 2020, IHSC has zero suspected cases of COVID-19 in York, Clinton, or Pike County and zero confirmed cases of COVID-19 in either York, Clinton, or Pike County. *Id.* ¶ 13.

The York, Clinton, and Pike County prisons have increased sanitation frequency and provide sanitation supplies as follows: York County Prison provides soap, hard surface disinfectant, and gloves and hand sanitizer (for staff) in all housing units. *Id.* ¶ 14. Masks are provided on an as requested basis. *Id.* Staff cleans high traffic areas repeatedly throughout the day. *Id.* The administration is encouraging both staff and the general population to use these tools often and liberally. *Id.* Clinton County Correctional Facility provides soap, hand sanitizer, and hard surface disinfectants in every housing unit at the facility. *Id.* All housing units are cleaned every two to three hours. *Id.* The administration is encouraging both staff and the general population to use these tools often and liberally. *Id.* Pike County Correctional Facility provides soap, hand sanitizer, hard surface disinfectant, and masks in every housing unit at the prison. *Id.* Continuous cleaning is performed throughout the day. *Id.* The administration is encouraging both staff and the general population to use these tools often and liberally.³ *Id.*

³ The Brief of *Amici Curiae* Public Health and Human Rights (Doc. 29-3), in arguing that “IHSC’s Recommendations to Combat COVID-19 are inadequate”, relies on March 6, 2020 interim guidelines. Doc. 29-3 (*Amici Curiae*) at 13. It outlines that these guidelines are inadequate because they focus on questions regarding travel rather than testing, hygiene and sanitation tools. *Id.* Because the COVID-19

Petitioners are thirteen immigration detainees housed in the Middle District of Pennsylvania at either York, Pike, or Clinton County who have various pre-existing medical conditions that require medical treatment. Doc. 1 (Pet.) ¶¶ 3, *et seq.* Petitioners allege that their many pre-existing conditions render them at increased risk for serious illness or death if they contract COVID-19. Petitioners note that they receive treatment for all of their pre-existing conditions while residing at their respective detention facilities. Doc. 1 (Pet.) ¶¶54, *et seq.* Petitioners do not allege any particularized deficiency in their medical. *Id.*

outbreak is a fluid situation, so is ICE's handling of preparation and prevention. As stated, the three ICE facilities at issue have a screening procedure that does include questions regarding contact and travel; however, it also involves temperature checks for detainees as well as staff and vendors, suspension of visitation, increased hygiene practices, and readily accessible sanitation supplies for staff and detainees. *See* Ex. 1, Moon Decl. It is inaccurate to state that there exists "no guidance or special protections for high-risk patients when they enter detention; and provide no guidelines for identifying high-risk patients who are already in detention." There are protocols for isolating and monitoring detainees *if someone tests positive*. New or transfer detainees are medically screened prior to entering the facility. This is outlined in the Moon affidavit.

Additionally, every medial organization has stated that hand washing with soap and water is the main preventative measure that should be employed with hand sanitizer recommended when soap and water is unavailable. Here, all three facilities offer copious amounts of soap and water and are recommending/educating about frequently doing it. *See* <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>. Also, there is no reliable evidence that facility staff have not been educated. And, if there is a positive test, nothing cited would establish that the protocols in place at the facilities are inadequate.

LEGAL STANDARD

Preliminary injunctions are an extraordinary remedy and are never awarded as of right. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, (2008); *Munaf v. Geren*, 553 U.S. 674, 689–90 (2008). Their purpose is to preserve the status quo and relative positions of the parties until the case is decided on the merits. *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981); *Anderson v. Davila*, 125 F.3d 148, 156 (3d Cir. 1997).

In order to obtain the injunctive relief he seeks, the moving party must demonstrate “(1) that he is likely to suffer irreparable injury in the absence of injunctive relief; [and] (2) that he is likely to prevail on the merits.” *Anderson*, 125 F.3d at 159 (citing *Schulz v. U.A. Boxing Ass’n*, 105 F.3d 127, 131 n.6 (3d Cir. 1997)); *Tenaflly Eruv Ass’n, Inc. v. Borough of Tenaflly*, 309 F.3d 144, 157 (3d Cir. 2002) (same). If he succeeds in demonstrating the first two requirements, the court should then consider, when relevant, “(3) the possibility of harm to other interested persons from the grant or denial of the injunction, and (4) the public interest.” *Acierno v. New Castle County*, 40 F.3d 645, 653 (3d Cir. 1994) (quoting *Del. River Port Auth. v. Transamerican Trailer Transp., Inc.*, 501 F.2d 917, 919-20 (3d Cir. 1974) (additional citation omitted)).

The Third Circuit has “repeatedly insisted that the use of judicial power to arrange relationships prior to a full determination on the merits is a weighty matter,

and the preliminary injunction device should not be exercised unless the moving party shows that it specifically and personally risks irreparable harm.” *Adams v. Freedom Forge Corp.*, 204 F.3d 475, 487 (3d Cir. 2000) (citing *Campbell Soup Co. v. ConAgra Inc.*, 977 F.2d 86, 91 (3d Cir. 1992)). “The dramatic and drastic power of injunctive force may be unleashed only against conditions generating a presently existing actual threat.” *Holiday Inns of Am., Inc. v. B & B Corp.*, 409 F.2d 614, 618 (3d Cir. 1969) (additional citations omitted). The Supreme Court has instructed that “the tool of the preliminary injunction should be reserved for ‘extraordinary situations.’” *Id.* (citing *Sampson v. Murray*, 415 U.S. 61, 88 (1974)). The Third Circuit has also “insisted that the risk of irreparable harm must not be speculative.” *Adams v. Freedom Forge Corp.*, 204 F.3d at 488 (citing *Acierno v. New Castle County*, 40 F.3d 645, 653 (3d Cir. 1994)). “Generally preliminary injunctions are granted to maintain the status quo.” *Sovereign Water v. Messineo*, 572 F. Supp. 983 (E.D. Pa. 1983) (citation omitted). Further, where the movant’s “request for immediate relief in his motion for preliminary injunction necessarily seeks resolution of one of the ultimate issues presented... [the movant] cannot demonstrate that [s]he will suffer irreparable harm if he is not granted a preliminary injunction, because the ultimate issue presented will be decided either by this Court, upon consideration of [Respondent’s Response to the Petition, or at an evidentiary hearing].” *Millhouse v. Samuals*, No. 1:15-CV-1644, 2016 WL 3436432, at *4

(M.D. Pa. Apr. 29, 2016), report and recommendation adopted sub nom. *Millhouse v. Samuals*, No. 1:15-CV-1644, 2016 WL 3457173 (M.D. Pa. June 20, 2016) (internal citations omitted).

ARGUMENT

I. Petitioners lack Article III standing.

“Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy. The doctrine developed in our case law to ensure that federal courts do not exceed their authority as it has been traditionally understood.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). The “irreducible constitutional minimum of standing” contains three requirements. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). First, a plaintiff must have suffered an “injury in fact”—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Id.* Second, the injury has to be “fairly . . . trace[able] to the challenged action of the defendant, and not . . . the result [of] the independent action of some third party not before the Court.” *Id.* Third, it must be “likely,” as opposed to merely “speculative” that the injury will be “redressed by a favorable decision.” *Id.* at 560-61 (internal citations omitted). Petitioners’ claims fail on all three elements.

A. Petitioners lack injury in fact.

Petitioners allege that, “Defendants’ ongoing detention of Petitioners violates

the Due Process Clause” under the Fifth Amendment because “Defendants are subjecting [Petitioners] to a heightened risk of contracting COVID-19”. Doc. 1, Pet. ¶ 136. Petitioners allege that because of their varied pre-existing medical conditions, they bear an elevated risk of serious, adverse outcomes if they contract COVID-19. *Id.* However, Petitioners’ assertion that detention *per se* poses an increased risk of health complications or death from COVID-19 is purely speculative.

To establish injury in fact, a plaintiff must show that he or she suffered “‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016) (quoting *Lujan*, 504 U.S. at 560. Injury in fact is a “constitutional requirement” and is the “[f]irst and foremost” of standing’s three elements. *Id.* at 1547-48 (quoting *Steel Co. v. Citizens for Better Environment*, 523 U. S. 83, 103 (1998)). To be “particularized” the injury “must affect the plaintiff in a personal and individual way.” *Lujan*, 504 U.S. at 560 n.1. “Particularization is necessary to establish injury in fact, but it is not sufficient. An injury in fact must also be ‘concrete.’” *Spokeo, Inc.*, 136 S. Ct. at 1548. A “concrete” injury must be “‘*de facto*’; that is, it must actually exist[,]” that is, it must be “real,” and not “abstract.” *Id.*

While “the risk of real harm” may, in some circumstances, be sufficiently concrete, “imminence . . . cannot be stretched beyond its purpose, which is to ensure

that the alleged injury is not too speculative for Article III purposes -- that the injury is ‘*certainly impending*,’” *Lujan*, 504 U.S. at 568; *see Andrews v. Cervantes*, 493 F.3d 1047, 1056 (9th Cir. 2007) (“The common definition of ‘imminent,’ however, does not refer only to events that are already taking place, but to those events ready to take place or hanging threateningly over one’s head.”).

Petitioners’ alleged harm—that their detention increases their risk of COVID-19—is entirely speculative. Petitioners have not alleged that COVID-19 has affirmatively spread to the Pike, York, or Clinton county facilities. Even assuming the “crowded conditions” Petitioners allege, crowding in and of itself does not cause COVID-19 infection if none in the group has contracted COVID-19. Petitioners’ claims of future injury are hypothetical, and Petitioners’ are not entitled to immediate release from detention based on a conjectural injury that they have not suffered. An injunction is “unavailable absent a showing of irreparable injury, a requirement that cannot be met where there is no showing of any real or immediate threat that the plaintiff will be wronged [] -- a ‘likelihood of substantial and immediate irreparable injury.’” *Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983).

Moreover, even if COVID-19 were introduced to any of the ICE facilities housing Petitioners, Petitioners allegations that Respondents are unprepared to respond to that contingency are unsupported. Indeed, Petitioners Petition and Motion demonstrate that Respondents have provided Petitioners with fully-funded

medical care and medication for a number of different conditions, and have transported Petitioners to outside hospitals when circumstances require. Doc. 1, Pet. ¶¶ 55-96 (“Mr. Thakker has significant health issues. . . . He takes 11 medications a day. . . . Since being detained Mr. Thakker twice has been sent from the prison to the community hospital.”); *Id.* ¶¶ 57-58.) (“Mr. Stubbs takes 12 pills a day for his various medical ailments. . . . he had a kidney transplant in 2014 . . . [and] Type II diabetes and heart stents.”); *Id.* ¶ 61 (“Ms. Lin has chronic hepatitis B.”); *Id.* ¶ 65 (“Mr. Augustin suffers from diabetes, high blood pressure, chronic anemia, [and] nerve issues. . . . He has had a number of medical emergencies while at York County Prison and as a result has had to be hospitalized many times.”); *Id.* ¶ 68 (“Mr. Juarez-Juarez suffers from diabetes.”); *Id.* ¶ 71 (“Mr. Idowu suffers from Type II diabetes, high blood pressure, and high cholesterol. . . . He receives medication for these conditions, including insulin and metformin.”); *Id.* ¶ 74 (“Mr. Gomez-Lopez has had the flu four times.”); *Id.* ¶ 78 (“Mr. Gomez-Hernandez has multiple chronic health issues. He is diabetic and currently receiving treatment for an ulcer.”) *Id.* ¶ 81 (“Mr. Pratt suffers from Type II diabetes and high blood pressure. He receives medication for these conditions.”) *Id.* ¶ 84 (“Mr. Oyediran has severe asthma . . . and a history of high blood pressure and high cholesterol.”) *Id.* ¶ 87 (“Mr. Mansyur has diabetes, thyroid issues, and high blood pressure. He receives medication for these medical issues.”) *Id.* ¶ 90 (“Mr. Prajoga has diabetes, cholesterol, high blood pressure, and

hepatitis. He takes medication for these conditions.”) *Id.* ¶ 93 (“Mr. Hillocks has several serious health problems. Seven months ago, he was diagnosed with leukemia. . . . He also has diabetes, high blood pressure, high cholesterol, and anemia. He takes insulin for his diabetes and also takes medication for his high blood pressure and cholesterol.”) *Id.* ¶ 96.

Any allegation that Respondents would inadequately attend to Petitioners’ medical needs in the future, at no cost to Petitioners, is contradicted by the remainder of their Petition and by their supporting declarations. Notably, Andrew Lorenzen-Strait, who “oversaw [ICE’s] health and welfare programs and services in immigration detention, including innovative programs to serve vulnerable populations” does not claim that the preventative measures, including health-related “segregation,” are inadequate to prevent the spread of COVID-19. *See* Decl. of Lorenzen-Strait Doc. 12, Ex. 17 at ¶¶ 2, *et seq.* Therefore, the “speculative nature” of Petitioners’ “claim of future injury requires a finding that th[e ‘likelihood of substantial and immediate irreparable injury’] prerequisite of equitable relief has not been fulfilled.” *Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983); *see Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 416 (2013) (finding standing based on fear, even one that is reasonable, “improperly waters down the fundamental requirements of Article III.”).

Petitioners introduced a letter attaching numerous “factual updates” in the

form of declarations from several of the petitioners. Doc. 33 (Letter). These declarations contain no factual basis for any of the information contained therein and are nothing more than speculative conjecture. Specifically, Mr. Thakker states that on March 26 a correctional officer told him another correctional officer had tested positive for COVID-19 and that three other officers were out sick. *See* (Doc. 33-2) Ex. 21.⁴ Further, Mr. Idowu states a person on his block was sick and his symptoms “seemed similar to COVID-19”, that medical showed up in “masks and gloves” but also that “staff are not wearing any gloves or masks”. *See* (Doc. 33-3) Ex. 22. Ms. Lin states that she had her temperature taken, someone in the facility was “wearing a mask and protective gear”, she “heard” two people were quarantined, and she was scared. *See* (Doc. 33-4) Ex. 23. Mr. Oyediran indicates he was moved from his block two times “because people were sick” and “had to be quarantined” but that he “is unaware of detainees or correctional officers being tested.” *See* (Doc. 33-5) Ex. 24.⁵ Finally, Mr. Stubbs indicates a person on his block “looks sick” and was blowing his nose, that he had his temperature was checked, and that he was scared. *See* Doc. 33-6) Ex. 25. Mr. Thakker and Mr. Stubbs both allege “block A is on

⁴ Mr. Thakker makes no allegations that the correctional officer who allegedly tested positive was in the facility, had any contact with him or any of the other petitioners, or, that even if that person did test positive it affected him in any way.

⁵ It should be noted that Mr. Oyediran has only been in the facility since March 3, 2020. It is not uncommon for newly placed detainees to be moved several times upon entry.

quarantine”. *See id.*; *see also* (Doc. 33-2) Ex. 21.⁶ Each of these observations comes from people, who are understandably scared, but untrained in medical testing and diagnostics. These are speculative observations based on what they have heard or feel. None of the assertions are backed by actual testing or confirmed medical information. Despite what each of these Petitioners feels about what is going on in the facility, ICE confirmed on March 27, 2020 that *there are zero suspected cases and zero confirmed cases* of COVID-19 inside York, Clinton, or Pike County facilities. *See* Ex. 1, Moon Decl. ¶ 12.

B. Even if Petitioners Alleged an Injury, Such Injury is not Fairly Traceable to Respondents.

To meet the standing requirements of Article III, “[a] plaintiff must allege personal injury fairly traceable to the defendant’s allegedly unlawful conduct and likely to be redressed by the requested relief.” *Allen v. Wright*, 468 U.S. 737, 751 (1984). Petitioners allege that their mere detention at the facility makes the risk of COVID-19 traceable to Respondents. However, assuming that Petitioners are at a heightened risk for death or serious illness because of their pre-existing conditions and that this heightened risk constitutes injury, this injury is not fairly traceable to Respondents’ detention of Petitioners.

⁶ The allegations of a “quarantine” on the women’s block were made by two men with no access to this block. As of March 29, 2020, “block A” was not under any special instruction due to COVID-19 or otherwise.

As Petitioners' acknowledge, COVID-19 is affecting large swaths of the globe. Neither Respondents, nor any other person or entity, can entirely ameliorate the risk of contracting COVID-19. There is no allegation, nor could there be, that Respondents are responsible for the outbreak of COVID-19. There is also no allegation that Respondents are constitutionally liable whenever a person within their custody contracts a communicable disease. *See Daniels v. Williams*, 474 U.S. 327, 332 (1986) ("Our Constitution deals with the large concerns of the governors and the governed, but it does not purport to supplant traditional tort law in laying down rules of conduct to regulate liability for injuries that attend living together in society."). Petitioners seem to allege that their detention, without more, makes the possibility of contracting COVID-19 traceable to Respondents. Petitioners are mistaken.

Petitioners are not entitled to—and the government cannot guarantee—absolute safety from COVID-19. Petitioners' heightened risk of death or serious illness stems from the nature of COVID-19 and their pre-existing conditions, not from Respondents' actions or detention. Where, as here, ICE has taken measures to prevent the spread of COVID-19 in all of its facilities, Petitioners' fear of COVID-19, based on their pre-existing conditions and the virulence of COVID-19, is insufficient to show that this speculative future harm is fairly traceable to the conduct of Respondents.

C. Petitioners’ Alleged Injury – a Heightened Risk for Serious Consequences from COVID-19-is not Redressable by Release.

Petitioners alleged injury—that they are subject to a heightened risk of death or serious illness if they contract COVID-19—will not be redressed by ordering their release. “Redressability requires an analysis of whether the court has the power to right or to prevent the claimed injury.” *Gonzales v. Gorsuch*, 688 F.2d 1263, 1267 (9th Cir. 1982) (Kennedy, J.). For purposes of standing, a plaintiff’s injury is redressable where there is “a ‘substantial likelihood’ that the requested relief will remedy the alleged injury.” *Vermont Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765, 771 (2000) (citation omitted). Petitioners’ desired relief—release from detention—will not ameliorate or diminish their claimed heightened risk of injury or death resulting from COVID-19, nor can a court order requiring release prevent Petitioners from contracting COVID-19.

IHSC provides medical care at no cost to detainees at York, Pike, and Clinton County, including Petitioners. By reason of their detention, Petitioners have greater access to robust medical care than the general public. Ordering their release would leave Petitioners without their present access to health care would arguably put Petitioners at greater risk of serious complications in the event that they contract COVID-19.

II. Petitioners May not Challenge the Conditions of their Confinement Through a Habeas Petition Seeking Immediate Release.

Petitioners' petition for habeas relief seeking immediate release is inappropriate in the context of a conditions of confinement claim. Section 2241 provides an avenue of relief for inmates who allege violations of the Constitution or federal law which make the place, the conditions, or the duration of confinement illegal. If a prisoner "is attacking something other than the fact or length of his confinement, [] he is seeking something other than immediate or more speedy release--the traditional purpose of habeas corpus." *Preiser v. Rodriguez*, 411 U.S. 475, 494 (1973); *see also Tedford v. Hepting*, 990 F.2d 745, 748 (3d Cir. 1993). Federal habeas corpus review is available only "where the deprivation of rights is such that it necessarily impacts the fact or length of detention." *Leamer v. Fauver*, 288 F.3d 532, 540 (3d Cir. 2002). Thus, if a claim does not directly implicate the fact or duration of an inmate's confinement, it may not be pursued by means of a habeas corpus petition. *Leamer*, 288 F.3d at 542.

Although both [42 U.S.C.] § 1983 and habeas corpus allow prisoners to challenge unconstitutional conduct by state officers, the two are not coextensive either in purpose or effect. Habeas relief is clearly quite limited: 'The underlying purpose of proceedings under the 'Great Writ' of habeas corpus has traditionally been to 'inquire into the legality of the detention, and the only judicial relief authorized was the discharge of the prisoner or his admission to bail, and that only if his detention were found to be unlawful.'"

Leamer v. Fauver, 288 F.3d 532, 540 (3d Cir. 2002) (quoting *Powers of Congress and the Court Regarding the Availability and Scope of Review*, 114 Harv.L.Rev. 1551, 1553 (2001)). A plaintiff seeking to impose liability due to the deprivation

of any rights, privileges, or immunities secured by the Constitution and laws, the appropriate remedy is a civil rights action. *Leamer*, 288 F.3d at 540. Thus, because Petitioners do not assert any illegality or impermissible duration of confinement, Petitioners’ petition for habeas relief seeking immediate release is inappropriate in the context of their conditions of confinement claim.

III. Petitioners do not satisfy the requirements for a preliminary injunction.

A. Petitioners are Unlikely to Succeed on the Merits.

Petitioners’ constitutional claims are unlikely to succeed on the merits. Though Petitioners fashion their complaints as a challenge to their “conditions of confinement,” Petitioners do not allege any concrete deficiency in the manner in which they are confined. Rather, Petitioners allege that *any* confinement of an individual more susceptible to COVID-19 due to age or medical affliction violates the Constitution. Petitioners in effect invite the Court to recognize a due process right to immediate, discretionary release. Petitioners have no such due process right.

1. Denial of Discretionary Relief to which Petitioners Lack a Legitimate Claim of Entitlement Does not Violate Due Process.

Petitioners’ prayer for relief makes clear that this litigation has nothing to do with the conditions of Petitioners’ confinement. Doc. 1 (Pet.) at 48. It *does not request a single improvement to their conditions of confinement. Id.* As Petitioners acknowledge, they essentially seek—and claim a due process interest in—an

exercise of “discretion to release.” Doc. 1 (Pet.) at 23. Therefore, the question is whether Petitioners have a due process right to a discretionary grant of parole for “urgent humanitarian reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. §§ 212.5(b), 235.3. Petitioners do not.

To claim a due process interest, Petitioners must first allege a legitimate claim of entitlement to a liberty or property interest. Where the benefit sought is discretionary, there can be no due process claim to it. At issue in this case is Petitioners’ claim of a liberty interest in a discretionary grant of humanitarian parole. Eight U.S.C. § 1182(d)(5)(A) provides that the Attorney General⁷ may “in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission...” 8 U.S.C. § 1182(d)(5)(A). The Supreme Court has made clear that “a benefit is not a protected entitlement if government officials may grant or deny it in their discretion.” *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005); *see also Appiah v. United States INS*, 202 F.3d 704, 709 (4th Cir. 2000) (“Because suspension of deportation is discretionary,

⁷ On March 1, 2003, the Immigration and Naturalization Service (“INS”) ceased to exist as an independent agency within the Department of Justice, and its functions were transferred to the newly formed Department of Homeland Security (DHS). *See* Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 441, 451, 471, 116 Stat. 2135 (Nov. 25, 2002). The INS was divided into three separate agencies, ICE, Customs and Border Protection (CBP), and Citizenship and Immigration Services (USCIS).

it does not create a protectable liberty or property interest.”), *cert. denied*, 531 U.S. 857 (2000).

The Third Circuit has already determined that parole under § 1182(d)(5)(A) is discretionary, in holding that “[s]ection 1182 is entirely a ‘piece of legislative grace, ... convey[ing] no rights[and] no status.’ It was not the kind of statute that ‘create[d] a vested liberty or property interest.’” *United States v. Torres*, 383 F.3d 92, 104 (3d Cir. 2004) (citing *Smith v. Ashcroft*, 295 F.3d 425, 429 (4th Cir. 2002) (internal citations omitted.) The Ninth Circuit similarly concluded “there is no statutorily created protected interest in parole.” *Kwai Fun Wong v. United States INS*, 373 F.3d 952, 968 (9th Cir. 2004). (“The INA does not create any liberty interest in temporary parole that is protected by the Fifth Amendment. Rather, the statute makes clear that whether and for how long temporary parole is granted are matters entirely within the discretion of the [Secretary of Homeland Security].”)

In *Greenholtz*, the Supreme Court squarely held that there is no constitutional right to parole. 442 U.S. at 7. The Court specifically held that the possibility of early release “provide[d] no more than a mere hope that the benefit will be obtained, a hope which is not protected by due process.” *Id.* at 11(internal citations omitted). Where, however, a state creates a parole system that statutorily mandates release unless specified conditions are met, a prisoner eligible for parole consideration may be entitled to certain due process protections. *See id.* at 12; *Frey v. Fulcomer*, 132

F.3d 916, 925 n. 7 (3d Cir.1997); *Walker v. Prisoner Review Bd.*, 769 F.2d 396, 400 (7th Cir.1985). As the Third Circuit stated in *Frey*,

the *Greenholtz* line of decisions stands for the proposition that state-created liberty interests will be found when the state (1) establishes substantive predicates to guide official decision making, and (2) uses explicit mandatory language in its regulations directing the decisionmaker to reach a particular outcome if the substantive predicates are present.

Frey, 132 F.3d at 925 n. 7.

Section 1182 uses no “explicit mandatory language” that could create in an alien any protectable expectation of entitlement to relief. The Court instead found relief under section [1182] falls squarely within what the Court in *Greenholtz* described as a ‘mere hope’ category of relief.” *Torres*, 383 F.3d 92, 105.

Petitioners rely on the February 2020 Allen & Rich letter to support their contention that “release is the only viable option” (Doc. 12 (Br. In Support) at 23) where these doctors recommended: “[m]inimally, DHS should consider releasing all detainees in high risk medical groups such as older people and those with chronic diseases.” *Id.* However, that recommendation goes on to say “***detainees who do not pose an immediate risk to public safety.***” Doc. 12 (Br. In Support) Ex. 9 at 5 (emphasis in original).⁸ Notwithstanding the fact that Petitioners have no entitlement to discretionary release, most of the Petitioners *have been considered for*

⁸ Also of note, the March 15, 2020 Allen and Rich letter advocates for proactive screening, testing, isolating, limiting transportation and transfers of detainees –all of which ICE has implemented as of March 27, 2020. See Ex. 1, Moon Decl.

discretionary release in due course as allowed under their individual detention status and currently controlling case law. Petitioners were denied or released accordingly. Specifically,

- a. Bharatkumar Thakker has a Petition for Review pending with the Third Circuit to challenge his removal order. *See Thakker v. Att’y Gen.*, No. 19-2780 (3d Cir. 2019). He also has a stay of removal. On February 18, 2020, this Court granted his habeas petition and ordered ICE to conduct a bond hearing due to the length of Thakker’s detention; however, he had already received an individualized bond hearing pursuant to *Guerrero-Sanchez v. Warden York County Prison*, 905 F.3d 208 (3d Cir. 2018) two weeks prior to that order. At that time the immigration judge determined Thakker was “still a significant risk” and denied bond. *See Ex. 3, Thakker Bond Denial.*
- b. Adebodun Adebomi Idowu has a Petition for Review pending with the Third Circuit to challenge the denial of his requested relief from removal. *See Idowu v. Att’y Gen.*, No. 19-3710 (3d Cir. 2019). He also has a temporary stay of removal. On December 12, 2019 and continuing into December 19, 2019, Idowu had a bond hearing pursuant to *Guerrero-Sanchez, supra*. The immigration judge determined that Idowu was a danger to the community and denied bond. *See Ex. 4, Idowu Bond denial.*
- c. Courtney Stubbs has a final order of removal and all that stands between him and removal to Jamaica is the issuance of his travel document. He also had a bond hearing pursuant to *Guerrero-Sanchez*, and was denied bond on January 13, 2020. *See Ex. 5, Stubbs Bond Denial.*
- d. Lin Meiling is an arriving alien and is currently detained under the detention statute that governs arriving aliens – 8 U.S.C. § 1225(b). She has a removal order and a pending appeal of that order. Of note, during her immigration proceedings, the immigration judge inquired as to her health to attempt to account for her non-responsive nature; however, she offered nothing but that she was anemic. *See Ex. 6, IJ Decision.* Further, despite the fact that Ms. Lin has the option to file for or renew

a parole request from ERO and has not done so, ICE is currently reviewing Ms. Lin for potential release.

- e. Jean H.C. Augustin had his appeal challenging his removal order dismissed by the Board of Immigration Appeals on March 17, 2020. Thus, he is subject to the 90-day removal period set forth in 8 U.S.C. § 1231(a)(1).⁹ Augustin has the option to file for or renew a parole request to ERO and has not done so.
- f. Rodolfo Juarez-Juarez is currently held in discretionary detention pursuant to 8 U.S.C. § 1226(a) as a pre-final removal order detainee. He was previously released on \$5,000 bond but had his bond revoked after committing additional crimes. He has another motion for bond currently pending before the immigration court. *See* Ex. 7, Motion for Bond & Bond Order.
- g. Domingo Gomez-Lopez has a Petition for Review pending with the Third Circuit to challenge the denial of his requested relief from removal. *See Gomez-Lopez v. Att’y Gen.*, No. 19-3454 (3d Cir. 2019). He also has a temporary stay of removal. On February 20, 2020, he was denied bond as a danger to the community. *See* Ex. 8, Gomez-Lopez Bond Denial.
- h. Rigoberto Gomez-Hernandez is currently held in discretionary detention pursuant to 8 U.S.C. § 1226(a) as a pre-final removal order detainee. He was considered for bond but denied as a danger to the community.¹⁰
- i. Henry Pratt is currently detained pursuant to 8 U.S.C. § 1231(a)(6) as an alien with a final order of removal. Pratt will not cooperate in obtaining a travel document for his removal to Jamaica. In addition, he was previously denied bond and has another bond application pending but his attorney has requested several continuances. *See* Ex. 9, Pratt Bond Denial and Declaration.

⁹ This information was obtained through the automated ICE case hotline.

¹⁰ This information was obtained from ICE’s counsel review of EARM; however, the order was inaccessible and not able to be provided at this time.

- j. Mayowa Abayomi Oyediran is currently detained under the provisions of 8 CFR 1208.2(c) due to his participation in the Visa Waiver Program. He has the option to file for or renew a parole request to ERO and has not done so.
- k. Fnu Mansyur was detained pursuant to 8 U.S.C. § 1231(a)(6) as an alien with a final order of removal; however, the BIA issued a stay of that removal on March 18, 2020, based on Mansyur's pending Motion to Reopen his proceedings. As of March 27, 2020, he had been released from Pike County Correctional Facility. *See* Doc. 33 at 1.
- l. Agus Prajoga was detained under 8 U.S.C. § 1231(a) as an alien with a final order of removal; however, he has a Petition for Review pending with the Third Circuit and a temporary stay of removal. As of March 27, 2020, he had been released from Pike County Correctional Facility. *Id.*
- m. Dexter Anthony Hillocks was granted bond but has failed to post that bond. *See* Ex. 10, Hillocks Bond Order. However, should he post the bond previously issued, he will be released.

Thus, two of the Petitioners have already attained release, two have avenues for release that do not involve a TRO order from this Court, one is currently being reviewed for release, and eight have been reviewed in the regular course of their immigration proceedings and their release was determined not to be warranted.

2. Petitioners cannot be Substantially Likely to Prevail on the Merits Where an Essential Element of their Constitutional Claim – Deliberate Indifference, Fails.

The Supreme Court held in *Helling v. McKinney*, 509 U.S. 25 (1993), that Eighth Amendment claims have a subjective and an objective component. *Id.* at 35. The objective component requires “more than a scientific and statistical inquiry into

the seriousness of the potential harm and the likelihood that such injury to health will actually be caused” by the allegedly unconstitutional conduct. *Id.* at 36. “It also requires a court to assess whether society considers the risk that the prisoner complains of to be so grave that it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk.” *Id.* Regarding the subjective element, the Court held that while “accidental or inadvertent failure to provide adequate medical care to a prisoner would not violate the Eighth Amendment, ‘deliberate indifference to serious medical needs of prisoners’ violates the Amendment because it constitutes the unnecessary and wanton infliction of pain contrary to contemporary standards of decency.” *Id.* at 32 (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)).

Petitioners, relying on *Helling*, contend that their allegation of potential medical complications should they be exposed to COVID-19 satisfies the objective element of their Eighth Amendment claim. Doc. 12 (Br. In Support) at 32. However, *Helling* is clearly distinguishable. Without deciding the merits of the case, the Court held that a prisoner whose cellmate had a five-pack-a-day cigarette habit had standing to bring an Eighth Amendment claim challenging an *existing* “condition of confinement that is sure or very likely to cause serious illness and needless suffering.” Thus, standing was premised on the prisoner’s *actual* exposure to smoke, not the facility’s location in an area with a high incidence of heavy smokers and the

speculative likelihood that one of those smokers would one day share a cell with the petitioner, adversely impacting his health. Petitioners would have this Court find the latter cognizable. The other cases cited by Petitioners are distinguishable for the same reason. Each addressed the petitioner's exposure to *existing* conditions that created a risk of future harm. *See, e.g., Hutto v. Finney*, 437 U.S. 678 (1978) (mingling of inmates with inmates with infectious diseases with others); *Stewart v. Kelchner*, No. 06-2463, 2007 WL 9718681 (M.D. Pa. May 11, 2007), *report and recommendation adopted*, 2007 WL 9718672 (M.D. Pa. June 1, 2007) (same). At base, Petitioners do not allege—nor could they—that they have been unequivocally exposed to COVID-19 in York, Pike, or Clinton County.

More importantly, Petitioners argument that the Government has acted with deliberate indifference fails. Contrary to Petitioners' assertions (Doc. 1 (Pet.) ¶¶ 45, 49, 52, 103, 104; Doc. 12 (Mot. In Support) at 11, 13, 14, 28, 29), ICE has screening, monitoring, restrictions, assessments, and protocols in place to deal with COVID-19 from a prevention, detection, and treatment standpoint. Ex. 1, Moon Decl. ¶¶ 8-19. Specifically, social visitation has been suspended, contact professional visits have been suspended; vendors, staff and new detainees are physically screened for respiratory symptoms and elevated body temperature; sanitation supplies and protective supplies have been made available; and education of staff and detainees has been provided. *Id.* Finally, each facility at issue has a fully staffed medical

department with 24/7 access for detainees and each with the ability to refer detainees to outside hospital facilities and *no* suspected or confirmed cases in any facility. *Id.* ¶¶ 11, 12. The lack of any confirmed COVID-19 cases inside any of the facilities underscores the effectiveness and care the Government has taken to protect vulnerable detainees.

Moreover, the cases Petitioners rely on in their Notice of Supplemental Authority (Doc. 27) are distinguishable. First, in *Basank v. Thomas*, Case No. 20-2518, 2020 L 1481503 (S.D.N.Y. Mar. 26, 2020), the three facilities at issue – Bergen, Essex, and Hudson –had each reported confirmed cases of COVID-19. *Basank*, at *2. The counties themselves encompassed “one-third of the confirmed cases of COVID-19 in New Jersey.” *Id.* Those circumstances are markedly different than here where there has not been one suspected or confirmed case of COVID-19 inside York, Pike, or Clinton County facilities. *See* Ex. 1, Moon Decl. at 12. Similarly, in *Coronel v. Thomas*, Case No. 20-2472 (S.D.N.Y. Mar. 27, 2020), the court stated the record was clear that ICE had taken “no specific action to prevent the spread of COVID-19”. *Coronel*, at 10. The record showed that there were no hygiene protocols to follow, no testing of those coming into the jail, or those with fevers. *Id.* at 10-11. Again, that is not the situation at York, Clinton, and Pike County where increased hygiene and safety protocols *are* in place, screening of vendors and staff occurs daily, visitation has been suspended, and sanitation supplies have been

provided to staff and detainees. *See* Ex. 1, Moon Decl. ¶¶ 14-18. Finally, in *Calderon Jimenez v. Wolf*, Case No. 20-101224 (D. Mass Mar. 26, 2020), the judge relied on a number of factors *unrelated* to COVID-19 to order release. Specifically, it was a previously pending habeas action where removal had been stayed. ICE has requested numerous extensions of the briefing schedule and “switched” positions as to why the alien was detained in the first place, and failed to understand its own regulations regarding the reasons to initially detain –all of which contributed to six and one-half months of detention. *Calderon Jimenez*, at 5-6. The court found release warranted because “except for ICE asking for and receiving extensions of time to respond or file a sur-reply ... there would have been a hearing and a decision on this case earlier.” *Id.* at 6.

3. Petitioners’ claims fail under the Fifth Amendment.

The constitutionally of pre-trial detention conditions under the Fifth Amendment requires an evaluation of whether those conditions “amount to punishment of the detainee.” *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). A condition constitutes punishment if a plaintiff can show that through express intent, or restriction, or condition that it is not “reasonably related to a legitimate governmental objective.” *Bell*, 441 U.S. at 539.

Petitioners do not present allegations or evidence to show Respondents have an “express intent” to punish Petitioners. Doc. 1 (Pet.); Doc. 12 (Br. In Support),

generally. Additionally, preventing detained aliens from absconding and ensuring that they appear for removal proceedings is a legitimate governmental objective. See *Jennings v. Rodriguez*, 583 U.S. ___, 138 S. Ct. 830, 836 (2018); *Demore v. Kim*, 538 U.S. 510, 523 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001). Moreover, Petitioners’ current confinement is not excessive in relation to that objective. Petitioners do not – because they can not - cite to authority under which the fact of detention itself becomes an “excessive” condition solely due to the risk of a communicable disease outbreak. Even if Petitioners had shown a Fifth Amendment violation, there exists “no authority under which such a violation would justify immediate release, as opposed to injunctive relief that would leave Plaintiffs detained while ameliorating any alleged violative conditions within the facility.” *Dawson v. Asher*, No. 20-cv-00409 (W.D. Wa. Mar. 19, 2020) (denying TRO requesting release of detainees due to COVID-19); see also *United States of America v. Rollins*, No. 11-CR-251S, 2020 WL 1482323 (W.D.N.Y. Mar. 27, 2020) (denying release of pre-trial detainee because “as serious as it is, the outbreak of COVID-19 simply does not override the statutory detention provisions [requiring detention]”); *United States of Am. v. Cox*, No. 219CR00271RFBVCF, 2020 WL 1491180 (D. Nev. Mar. 27, 2020) (same); *United States of Am. v. Morris*, No. CR1710701DWFTNL, 2020 WL 1471683, at *3 (D. Minn. Mar. 26, 2020) (same); *United States of America v. Johnson*, No. 19-CR-20437-01, 2020 WL 1474397, at

*4 (E.D. Mich. Mar. 26, 2020)(same); *United States of America v. Munguia*, No. 3:19-CR-191-B (03), 2020 WL 1471741, at *4 (N.D. Tex. Mar. 26, 2020) (“the Court cannot release every detainee at risk of contracting COVID-19 because the Court would then be obligated to release every detainee”); *United States of America v. Martin*, Criminal Case NO. PWG-19-140-13 (D. Md. Mar. 17, 2020) (denying pre-trial release to protect from exposure to COVID-19 where defendant suffered from asthma, high blood pressure, and diabetes because correctional and medical staff were implementing precautionary and monitoring practices sufficient to protect detainees from exposure to the COVID-19 virus); *United States v. Clark*, No. 19-40068-01-HLT, 2020 WL 1446895, at *1 (D. Kan. Mar. 25, 2020) (denying motion for release of pre-trial detainee who alleged detention is a “lethal threat...because he is a diabetic and does not have an opportunity for social distancing.” The court was “sympathetic to his concerns, but Mr. Clark is not alone. COVID-19 presents serious ongoing concerns for millions of people, especially those with certain underlying medical conditions” but denying release “based solely on generalized COVID-19 fears and speculation.”)

B. Petitioners have not Shown Irreparable Harm.

The Supreme Court’s “frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an injunction.” *Winter*, 555 U.S. at 22 (emphasis in original). “Issuing

a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Id.* Here, “[t]he dramatic and drastic power of injunctive force may be unleashed only against conditions generating a *presently existing* actual threat.” *Holiday Inns of America, Inc. v. B & B Corp.*, 409 F.2d 614, 618 (3d Cir.1969) (emphasis added). Further, the risk of irreparable harm must not be speculative. *See, e.g., Adams v. Freedom Forge Corp.*, 204 F.3d 475, 487–88 (3d Cir. 2000; *Acierno v. New Castle Cty.*, 40 F.3d 645 (3d Cir.1994).

As stated above, Petitioners allege that only release from immigration detention into the general population, will spare them the heightened risk of adverse consequences from COVID-19 due to their pre-existing conditions. This is not only speculative, but it is unlikely. Petitioners suggest there is a “real possibility” they will be infected if not released from detention but do not explain how they will suffer irreparable harm in the absence of an order requiring their release, given that Petitioners’ existing medical care would be interrupted if not ended as a consequence of their release. If Petitioners continue to receive adequate medical care and shelter from COVID-19 in immigration detention, their harm is non-existent much less irreparable.

The cases Petitioners rely on to bolster their claims of irreparable harm are

distinguishable. For instance, Petitioners rely on *Boone v. Brown*, No. 05-0750, 2005 WL 2006997 (D.N.J. 2005), for the proposition that refusal to test for a highly contagious infectious disease is sufficient to demonstrate irreparable harm. Doc. 12 (Br. In Support) at 46. The plaintiff in *Boone* had been subjected to several standard tests for tuberculosis. Each time, he developed a more severe allergic reaction. He repeatedly requested prison medical staff administer an alternative TB test to reduce the risk of the *documented allergic reaction* he experienced, but was not afforded an alternative test and was disciplined for failing to allow the performance of the standardized TB test. The court granted a preliminary injunction requiring alternative TB testing pending the outcome of Boone's lawsuit. *Boone*, 2005 WL 2006997, at *14. In *Boone*, unlike here, the harm plaintiff suffered as a result of the standardized TB test actually existed and was not a "real possibility."

In addition, the issue in *Austin v. Pa Dep't of Corr.*, No. 90-7497, 1992 WL 277511 (E.D. Pa. 1992) centered on an inadequate screening, monitoring, and assessment procedure for TB inmates entering and in the PA Department of Corrections – a procedure which had been in place for at least five years. The court found that irreparable harm existed if the inadequate program was not updated to ensure the testing and tracking of live cases was adequate and accurate. Similarly, the Second Circuit in *Jolly v. Coughlin*, 76 F.3d 468 (2d Cir. 1996) found that "correctional officers have an affirmative obligation to protect prisoners from

infectious disease” where there existed *deficient TB control and treatment*. In this instance, ICE has protocols in place and has had them in place since the inception of the pandemic. *See* Ex. 2, Rivera Decl.; Ex. 1, Moon Decl. Unlike the inadequate and outdated procedures for TB at issue in *Austin* and *Jolly*, ICE’s procedures for COVID-19 are identical to those recommended by the CDC and designated experts on infectious disease and detention facilities. *Id.* Thus, Petitioners have failed to establish the likelihood of irreparable harm where procedures exist to adequately test, control, and treat detainees in all three facilities where not one positive case has even been confirmed.

C. The Balance of Interests and Public Interest Favor Respondents

It is well-settled that the public interest in enforcement of United States immigration laws is significant. *United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (“The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.”); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) (“There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and permit[s] and prolong[s] a continuing violation of United States law.” (internal marks omitted)).

Petitioners ask the Court to order Respondents to declare unconstitutional the detention of “all people over ages forty-five and older and persons of any age with underlying medical conditions[.]” Doc. 1 (Pet.) at 48.¹¹ Given the vast expanse and indiscriminate nature of Petitioners’ requested order, the balance of interests clearly favors Respondents. The disruptive effect of such an order would long survive the COVID-19 pandemic, and would serve to release many criminal aliens slated for removal back into the general public. This type of burden and attendant harm, and its potential impact on ICE operations nationwide, is too great to be permissible.

Because Petitioners’ cannot show that the balance of hardships and public interest tips in their favor, the Court should deny Petitioners’ request for preliminary relief.

¹¹ Considering that ICE detains many individuals that fall into this sweeping category and provides for their medical care, the Court should consider carefully what effect such a thoughtless release order would impose on the public at a time when states are struggling to provide healthcare resources to address the COVID-19 pandemic.

CONCLUSION

Because Petitioners lack standing, have improperly brought their conditions of confinement claims in a habeas petition and cannot satisfy the requirements for preliminary relief, Respondents respectfully request the Court deny Petitioners' Motion for a Temporary Restraining Order and Petition for Writ of Habeas Corpus.

Respectfully submitted,

DAVID J. FREED
United States Attorney

s/Joanne M. Sanderson
Joanne M. Sanderson
Assistant U.S. Attorney
PA 315327
228 Walnut Street
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Phone: 717-221-4482
Fax: 717-221-4493

Dated: March 29, 2020

DJF:jms

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BHARATKUMAR G. THAKKER, :		
et al.,	:	NO. 1:CV-20-0480
Petitioner-Plaintiffs	:	
	:	(Jones, J.)
v.	:	
	:	
CLAIR DOLL, in his official	:	
Capacity as Warden of York	:	
County Prison, et al.,	:	
Respondents-Defendants	:	(Filed Electronically)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers.

That on March 29, 2020, she served a copy of the attached

**RESPONDENTS' RESPONSE AND OPPOSITION
TO PETITION FOR WRIT OF HABEAS CORPUS AND
MOTION FOR TEMPORARY RESTRAINING ORDER AND OR
PRELIMINARY INJUNCTION**

by electronic service pursuant to Local Rule 5.7 and Standing Order 04-6, ¶12.2 to the following individual(s):

Addressees:

Witold J. Walczak vwalczak@aclupa.org	Carla G Graff carla.graff@dechert.com	Erika Nyborg-Burch enyborg-burch@aclupa.org
Muneeba S Talukder mtalukder@aclupa.org	Thomas James Miller thomas.miller@dechert.com	Vanessa L. Stine vstine@aclupa.org
Will W. Sachse will.sachse@dechert.com	John Grogan jgrogan@langergrogan.com	

s/Joanne M. Sanderson

Joanne M. Sanderson
Assistant United States Attorney

DJF:jms

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BHARATKUMAR G. THAKKER, :		
et al., :		NO. 1:CV-20-0480
Petitioner-Plaintiffs :		
		: (Jones, J.)
v. :		
CLAIR DOLL, in his official :		
Capacity as Warden of York :		
County Prison, et al., :		
Respondents-Defendants :		(Filed Electronically)

**EXHIBITS IN SUPPORT OF RESPONDENTS' RESPONSE AND
OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS AND
MOTION FOR TEMPORARY RESTRAINING ORDER AND OR
PRELIMINARY INJUNCTION**

DAVID J. FREED
United States Attorney

s/Joanne M. Sanderson
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Fax: 717-221-4493

Date: March 30, 2020

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**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BHARATKUMAR G. THAKKER, :	
<i>Et al.,</i>	: No. 1:20-cv-480
Petitioners-Plaintiffs,	:
	: (Judge Jones)
v.	:
	:
CLAIR DOLL, in his official	:
Capacity as Warden of York	:
County Prison, <i>et al.</i>,	:
Respondents-Defendants	: (Filed Electronically)

DECLARATION OF JENNIFER MOON

I, Captain Jennifer Moon, MPH, MSN, FNP-BC, hereby declare under penalty of perjury that the following statements are true and correct to the best of my knowledge, information, and belief:

1. I am employed by U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), and currently serve as the Deputy Assistant Director for Healthcare Compliance with ICE Health Service Corps (IHSC). I have held this position since November 1, 2018.
2. In my current position, I provide oversight of the Medical Case Management Unit to which the Field Medical Coordinators (FMCs) report. The FMCs serve as medical consultants to the ICE field offices and oversee clinical services at Inter-Governmental Service Agreement (IGSA) facilities that house ICE detainees, including the York County Prison, the Clinton County Correctional

Facility (Clinton County Prison), and the Pike County Correctional Facility (Pike County Prison).

3. IHSC's FMCs ensure that the provision of medical care by contractors to the ICE detainees within the IGSA facilities meets detention standards, as required by the IGSA contract. The FMCs do not provide hands-on care or direct the care within the IGSAs but monitor the medical care and services provided by the contract facilities. Medical staff at the contract facilities are directly responsible for medical care at the facility.

4. IHSC comprises a multidisciplinary workforce that consists of U.S. Public Health Service Commissioned Corps (USPHS) officers, federal civil servants, and contract health professionals.

5. Since the onset of Coronavirus Disease 2019 (COVID-19) reports, ICE epidemiologists have been tracking the outbreak, regularly updating infection prevention and control protocols, and issuing guidance to field staff on screening and management of potential exposure among detainees.

6. In testing for COVID-19, IHSC is also following guidance issued by the Centers for Disease Control (CDC) to safeguard those in its custody and care.

7. Each detainee is screened for disabilities upon admission. Identified disabilities are further evaluated and reasonable accommodations are provided as medically appropriate.

8. At the York, Clinton, and Pike County Prisons, during intake medical screenings, detainees are assessed for fever and respiratory illness, are asked to confirm if they have had close contact with a person with laboratory-confirmed COVID-19 in the past 14 days, and whether they have traveled from or through area(s) with sustained community transmission in the past two weeks.

9. The detainee's responses and the results of these assessments will dictate whether to monitor or isolate the detainee. These detainees who present symptoms compatible with COVID-19 will be placed in isolation, where they will be tested. If testing is positive, they will remain isolated and treated. In case of any clinical deterioration, they will be referred to a local hospital.

10. In cases of known exposure to a person with confirmed COVID-19, asymptomatic detainees are placed in cohorts with restricted movement for the duration of the most recent incubation period (14 days after most recent exposure to an ill detainee) and are monitored daily for fever and symptoms of respiratory illness. Cohorting is an infection prevention strategy which involves housing detainees together who were exposed to a person with an infectious organism but are asymptomatic. This practice lasts for the duration of the incubation period of 14 days, because individuals with these and other communicable diseases can be contagious before they develop symptoms and can serve as undetected source patients. Those that show onset of fever and/or respiratory illness are referred to a

medical provider for evaluation. Cohorting is discontinued when the 14-day incubation period completes with no new cases. Per ICE policy, detainees diagnosed with any communicable disease who require isolation are placed in an appropriate setting in accordance with CDC or state and local health department guidelines.

11. The York, Clinton, and Pike County Prisons each has the following medical capabilities:

- a. The York County Prison, which manages both males and females, provides daily access to sick calls in a clinical setting and has onsite medical staff 24 hours a day, 7 days a week with the ability to admit patients to the local hospital for medical, specialty, or mental health care.
- b. The Clinton County Prison, which manages both males and females, provides daily access to sick calls in a clinical setting and has onsite medical staff 24 hours a day, 7 days a week- with the ability to admit patients to the local hospital for medical, specialty, or mental health care.
- c. The Pike County Prison, which manages both males and females, provides daily access to sick calls in a clinical setting and has onsite medical staff 24 hours a day, 7 days a week with an onsite

medical infirmary and the ability to admit patients to the local hospital for medical, specialty, or mental health care.

12. As of 9:30 a.m. on March 27, 2020, IHSC has the following information.

- a. There are zero suspected cases of COVID-19 at the York, Clinton, and Pike County Prisons.
- b. There are zero confirmed cases of COVID in the York, Clinton, and Pike County Prisons.

13. The York, Clinton, and Pike County Prisons all have populations within their approved capacities and are not overcrowded.

14. The York, Clinton, and Pike County Prisons have increased sanitation frequently and provide sanitation supplies as follows:

- a. York County Prison- provides soap, hard surface disinfectant, and gloves in every housing unit at the prison. Masks are provided on an as requested basis. Staff cleans high traffic areas repeatedly throughout the day. The administration is encouraging both staff and the general population to use these tools often and liberally.
- b. Clinton County Prison- provides soap, hand sanitizer, hard surface disinfectant in every housing unit at the prison. All housing units are cleaned every two to three hours. The administration is

encouraging both staff and the general population to use these tools often and liberally.

- c. Pike County Prison- provides soap, hand sanitizer, hard surface disinfectant, and masks in every housing unit at the prison.

Continuous cleaning is performed throughout the day. The administration is encouraging both staff and the general population to use these tools often and liberally.

15. The York, Clinton, and Pike County Prisons have limited professional visits to noncontact visits and suspended in person social visitation and facility tours.

16. The York, Clinton, and Pike County Prisons are screening all staff and vendors when they entered the facilities including body temperatures.

17. The York, Clinton, and Pike County Prisons are screening all detainee intakes when they enter the facilities including travel histories, medical histories, and checking body temperatures and have procedures in place to continue monitoring the populations' health.

18. The York, Clinton, and Pike County Prisons provide education on COVID-19 to staff and detainees to include the importance of hand washing and hand hygiene, covering coughs with the elbow instead of with hands, and

requesting to seek medical care if they feel ill. The facilities provide detainees daily access to sick call.

19. The York, Clinton, and Pike County Prisons have identified housing units for the quarantine of patients who are suspected of or test positive for COVID-19 infection to be address as set forth in paragraphs 8 and 9 *supra*.

I declare, under penalty of perjury under 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge and based on information obtained from other individuals employed by ICE.

Executed this 27th day of March 2020.

Captain Jennifer Moon, MPH, MSN, FNP-BC
Deputy Assistant Director for Healthcare Compliance
ICE Health Service Corps
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KARLENA DAWSON, et al.,

Petitioners-Plaintiffs,

v.

NATHALIE ASHER, et al.,

Respondents-Defendants.

Case No. C20-0409-JLR-MAT

DECLARATION OF DR. ADA RIVERA

I, Dr. Ada Rivera make the following statements under oath and subject to the penalty of perjury:

1. I am currently the Deputy Assistant Director for Clinical Services/Medical Director of the ICE Health Service Corps (IHSC) of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement (ICE). I have held this position since July 2017.
2. In my current position, I oversee and monitor all clinical services at IHSC-staffed facilities that house ICE detainees, including the Northwest ICE Processing Center (NIPC) in Tacoma, Washington.
3. IHSC provides direct medical, dental, and mental health patient care to approximately 13,500 detainees housed at 20 IHSC-staffed facilities throughout the nation.
4. IHSC comprises a multidisciplinary workforce that consists of U.S. Public Health Service Commissioned Corps (USPHS) officers, federal civil servants, and contract health professionals.
5. Since the onset of reports of Coronavirus Disease 2019 (COVID-19), ICE epidemiologists have been tracking the outbreak, regularly updating infection prevention and control protocols, and issuing guidance to IHSC staff for the screening and management of potential exposure among detainees.
6. Moreover, ICE has maintained a pandemic workforce protection plan since February 2014, which was last updated in May 2017. This plan provides specific guidance for biological threats such as COVID-19. ICE instituted applicable parts of the plan in January 2020 upon the discovery of the potential threat of COVID-19.

7. Also, IHSC has been in contact with relevant offices within the Department of Homeland Security, and in January 2020, the DHS Workforce Safety and Health Division provided DHS components additional guidance to address assumed risks and interim workplace controls, including the use of N95 masks, available respirators, and additional personal protective equipment.
8. As a precautionary measure, ICE has temporarily suspended social visitation in all detention facilities.
9. In testing for COVID-19, IHSC is also following guidance issued by the Centers for Disease Control to safeguard those in its custody and care.
10. IHSC has issued recommendations to the field units at detention centers, which it updates and shares on a real-time basis.
11. In summary, during intake medical screenings, comprehensive health assessments or based on detainee complaints, detainees are assessed for fever and respiratory illness, are asked to confirm if they have had close contact with a person with laboratory-confirmed COVID-19 in the past 14 days, and whether they have traveled from or through area(s) with sustained community transmission in the past two weeks.
12. The detainee's responses and the results of these assessments will dictate whether to monitor or isolate the detainee. Those detainees that present symptoms compatible with COVID-19 will be placed in isolation, where they will be tested. If testing is positive, they will remain isolated and treated. In case of any clinical deterioration, they will be referred to a local hospital.
13. In cases of known exposure to a person with confirmed COVID-19, asymptomatic detainees are placed in cohorts with restricted movement for the duration of the most recent incubation period (14 days after most recent exposure to an ill detainee) and are monitored daily for fever and symptoms of respiratory illness. Those that show onset of fever and/or respiratory illness are referred to a medical provider for evaluation. Cohorting is discontinued when the 14-day incubation period completes with no new cases.
14. In the case of exposure to a person with fever or symptoms being evaluated or under investigation for COVID-19 but not confirmed, the process is the same except that cohorting is discontinued if the index patient receives an alternate diagnosis excluding COVID-19.
15. Field units have also been instructed to educate detainees to include the importance of hand washing and hand hygiene, covering coughs with the elbow instead of with hands, and requesting sick call if they feel ill.
16. Currently, IHSC has the following information for the NIPC:
 - There are currently 3 detainees under isolation for fever and/or symptoms plus having epidemiologic risk. Their dates of isolation are as follow:

- 03/16/2020 (Not tested for COVID-19 – The statement on this detainee’s medical record reveals that he has not traveled from a country with sustained community spread in the past and has not had contact with a known case in the past 2 weeks, which means that he does not meet the CDC criteria for testing at this time. The detainee is isolated in a single cell and is being monitored closely for clinical worsening of any signs/symptoms consistent with COVID-19)
 - 03/16/2020 (Tested for COVID-19 on 03/17/2020; results are pending)
 - 03/13/2020 (Tested for COVID-19 on 03/13/2020; results negative for COVID-19)
 - There are currently 2 detainees under monitoring for epidemiologic risk without fever or symptoms. Monitoring started on:
 - 03/06/2020
 - 03/03/2020
 - There were 2 additional asymptomatic/afebrile detainees under monitoring that were previously released from monitoring after completion of the 14- day monitoring period. Monitoring started:
 - 03/02/2020
 - 01/30/2020
 - There have been 2 dorms cohorted at the facility. These dorms are related to the detainees with symptoms who have been tested.
 - Housing Unit B2 74 detainees started 03/13/2020
 - Housing Unit F4 72 detainees started 03/16/2020
17. As of today, IHSC has not received any positive COVID-19 results from the NIPC or any of the rest of the IHSC staffed ICE facilities

---REST OF PAGE LEFT BLANK INTENTIONALLY---

I declare, under penalty of perjury under 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED: March 18, 2020

ADA I RIVERA Digitally signed by ADA I RIVERA
Date: 2020.03.18 13:24:03 -04'00'

Dr. Ada Rivera
Deputy Assistant Director for Clinical Services/Medical Director
ICE Health Service Corps
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement



**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
YORK IMMIGRATION COURT**

Respondent Name:
THAKKER, BHARATKUMAR

Alien Registration Number:
030811876
Riders:

Address:
C/O PIKE ICE
LORDS VALLEY, PA 18428

In Custody Redetermination Proceedings

Attorney Name:

Date: 02/03/2020

Attorney Address:

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

☒ Denied, because:

There is a final order of removal, and the circumstances regarding the significant risk and danger to property have not been abated by the passage of time. Respondent remains a significant risk to property.

☐ Granted. It is ordered that Respondent be:

☐ released from custody on his own recognizance.

☐ released from custody under bond of \$

☐ other:

☐ Other:

Appeal: Department of Homeland Security:

☒ waived

☐ reserved

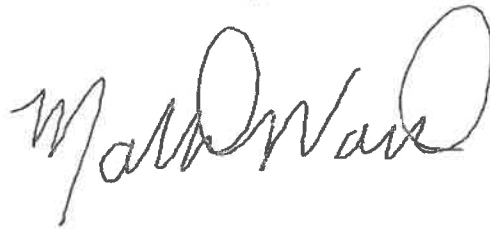
Respondent:

☐ waived

☒ reserved

Appeal Due: 03/04/2020

Handwritten in blue ink:
Pike Bldg
No Afile
RE 3 FEB 20

A handwritten signature in black ink, appearing to read "Matthew Watters", is written in a cursive style.

Immigration Judge: Watters, Matthew 02/03/2020

Certificate of Service

This document was served:

Via: ☒ M] Mail | ☐ P] Personal Service | ☐ E] Electronic Service

To: ☐ Alien | ☒ M] Alien c/o custodial officer | ☐ Alien's atty/rep. | ☐ P] DHS

By: Wright, Janda , Court Staff

Date: 02/03/2020

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
YORK, PA

RESPONDENT
EXHIBIT

4

FILE: A204-892-773

IN THE MATTER OF:

IDOWU, ADEBODUN

RESPONDENT

IN REMOVAL PROCEEDINGS

2020 JAN - 6 PM 3:08
OFFICE OF THE
CHIEF COUNSEL
YORK

RECEIVED
DHS ICE

Amended
ORDER OF THE IMMIGRATION JUDGE
WITH RESPECT TO CUSTODY

Request having been made for a change in the custody status of respondent pursuant to 8 CFR 236.1(c), and full consideration having been given to the representations of the Department of Homeland Security and the respondent, it is hereby

☒ ORDERED that the request for a change in custody status be denied.

☐ ORDERED that the request be granted and that respondent be:

☐ released from custody on his own recognizance

☐ released from custody under bond of \$

☒ OTHER *Danger and Significant Flight Risk*

Copy of this decision has been served on the respondent and the Department of Homeland Security.

APPEAL: *waived* -- reserved

YORK -- CLINTON COUNTY PRISON

Date: Dec 19, 2019

[Signature]

GOLPARVAR, KUYOMARS Q.
Immigration Judge

by both

XS

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
YORK, PENNSYLVANIA**

In the Matter of

Adebodun IDOWU

Respondent

IN REMOVAL PROCEEDINGS

A204-892-773

ON BEHALF OF RESPONDENT:

Sandra Greene, Esq.
Greene Fitzgerald Advocates and Consultants
2575 Eastern Blvd., Suite 208
York, PA 17402

ON BEHALF OF THE DHS:

Karen Comrey, Esq.
Office of Chief Counsel
U.S. Immigration and Customs Enforcement
York, PA 17402

BOND MEMORANDUM DECISION OF THE IMMIGRATION COURT

I. RELEVANT FACTUAL AND PROCEDURAL HISTORY

Respondent is a twenty-one-year-old native and citizen of Nigeria. Bond Ex. 2, Tab A. On March 1, 2013, he was admitted to the United States with a B2 nonimmigrant visa.¹ *Id.* Respondent adjusted to a conditional permanent resident on October 20, 2013 based on his marriage to a United States citizen. *Id.* at 43. On June 21, 2017, USCIS terminated Respondent's conditional permanent resident status because Respondent had failed to show that the marriage was not entered into in good faith. *Id.* at 46.

On September 26, 2017, Respondent pled guilty to Conspiracy to Launder Monetary Instruments, in violation of 18 U.S.C. § 1956(h), 18 U.S.C. § 1957(b)(1), and 18 U.S.C. § 1343, and was sentenced to 16 months imprisonment. *See* Bond Ex. 2, Tab B.

Respondent was ordered removed pursuant to an administrative order by DHS, under INA § 238, based on his aggravated felony conviction. Respondent then expressed a fear of returning to Nigeria and was given a reasonable fear interview. Respondent was found to have a reasonable fear of returning to Nigeria, and was placed into Withholding Only proceedings. On June 11, 2019, an Immigration Judge in York, Pennsylvania denied Respondent's application for Withholding of removal under INA § 241(b)(3) and Withholding and Deferral of Removal pursuant to the Convention Against Torture. *See* Bond Ex. 2, Tab E. Respondent appealed to the Board of Immigration Appeals (BIA), who dismissed his appeal on November 13, 2019. *Id.* at Tab D.

¹ The Court notes that Respondent's I-213, submitted by DHS indicates that he entered the United States in March 2013 with a B2 visa, but Respondent's bond worksheet, submitted by Respondent, indicates that Respondent entered the United States in 2011 as a lawful permanent resident. *See* Bond Exs. 2, Tab A; 3.

Adebodun IDOWU

204-892-773

Page 2 of 5

Respondent has since filed an appeal with the Third Circuit Court of Appeals, which remains pending.

The Court's findings of fact are based on Bond Exhibits 1 through 4, as well as the arguments provided at the December 12, 2019 and December 19, 2019 bond hearings. At the hearings, the Court found that DHS met their burden in demonstrating that Respondent is a danger to the community and a flight risk, and denied Respondent's request for custody redetermination. As Respondent has appealed the Court's bond decision to the Board of Immigration Appeals (Board), this bond memo follows.

II. DOCUMENTARY EVIDENCE

Bond Ex. 1: Zero Bond Order

Bond Ex. 2: DHS Evidence Submission

Bond Ex. 3: Bond Worksheet

Bond Ex. 4: Respondent's Evidence Submission

III. STATEMENT OF LAW

On September 26, 2018, the Third Circuit addressed when Immigration Judges have jurisdiction to conduct bond hearings for aliens detained pursuant to INA § 241(a)(6). *Guerrero-Sanchez v. Warden York Cty. Prison*, 905 F.3d 208, 211 (3d Cir. 2018). The Third Circuit determined that there was no substantial distinction between the liberty interests of aliens detained under INA § 236(a) and INA § 241(a)(6), the post-removal provision,² and observed that at a certain point continued detention can become unconstitutional unless the government can justify that such detention is necessary to prevent flight and danger to the community. *Id.* at 222 (citing *Diop v. ICE/Homeland Security*, 656 F.3d 221, 231-32 (3d Cir. 2011)). Thus, the Third Circuit held that *all* aliens detained under 8 U.S.C. § 1231(a)(6) (INA § 241(a)(6)) are entitled to bond hearings after a prolonged detention of six months. *Id.* at 226-28.

In conducting this hearing, the Court must undertake a two-step analysis to determine whether Respondent is eligible for bond. First, the Court must determine whether the DHS has met its burden by clear and convincing evidence that Respondent's release poses a danger to persons or property in the community, and second, whether the DHS has met its burden by clear and convincing evidence that Respondent is a significant flight risk. *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006); *see also Guerrero-Sanchez*, 905 F.3d at 224, n.12.

² The authorization for an alien's detention shifts from the pre-removal phase to the post-removal phase at the point that the alien's order of removal becomes administratively final and removal is certain. The Third Circuit noted that INA § 241(a)(6) authorizes continued detention beyond the removal period for a timeframe "reasonably necessary to bring about the alien's removal from the United States." *Guerrero-Sanchez*, 905 F.3d at 214 (citing *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001)) ("An alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.").

Adebodun IDOWU
204-892-773
Page 3 of 5

In making its assessment, the Court shall consider the following factors: seriousness of the crimes committed, if any; prior criminal history; sentences imposed and time served; nonappearance at court proceedings; probation history; length of residence in the community; and evidence of rehabilitative effort or recidivism. *See Matter of Drysdale*, 20 I&N Dec. 815, 817 (BIA 1994); *see also Matter of Melo*, 21 I&N Dec. 883, 886 (BIA 1997); *Matter of Andrade*, 19 I&N Dec. 488, 490 (BIA 1987).

IV. LEGAL ANALYSIS AND FINDINGS

First and foremost, the Court notes that both Respondent and DHS waived their appeal rights concerning Respondent's bond determination. At the December 19, 2019 bond hearing, Respondent reserved his right to appeal. Then, on December 31, 2019, Respondent filed a Notice of Waiver of Right to Appeal Denial of Bond. In this waiver, it states that Respondent hereby provides notice to the Court that he wishes to waive his right to appeal his bond determination and wishes to return to Nigeria as soon as possible. Thus, the Court finds that Respondent, through counsel, knowingly and voluntarily waived his right to an appeal of this Court's bond determination. In the alternative, however, the Court will address the merits of Respondent's bond redetermination denial.

Next, the Court finds that it has jurisdiction over Respondent's bond proceedings pursuant to *Guerrero*, despite DHS's initial argument that the Court did not have jurisdiction since Respondent had not been the subject of a final order of removal for six months or more. However, the Court finds that since Respondent is in Withholding Only proceedings, he was subject to a final order or removal before he was placed in proceedings. The fact that the BIA just recently dismissed Respondent's appeal in November 2019 is not dispositive of whether the Court has jurisdiction under *Guerrero*, as it does in regular removal proceedings. The Court does not have a document indicating exactly what day DHS issued the administrative removal order for Respondent under INA § 238, but Respondent has been detained for over 13 months. Thus, the Court finds Respondent has been the subject of a final removal order for more than six months, and thus has jurisdiction under *Guerrero*. *See Guerrero*, 905 F.3d at 211.

The DHS argues that Respondent's conviction for money laundering renders him a danger to the community, specifically a danger to property. Additionally, USCIS found that Respondent did not enter his marriage in good faith. Both of these incidents, together, speak to Respondent's dishonesty, as they both involve fraud and deceit. Further, DHS argues that Respondent is a significant flight risk since his appeal to the BIA was dismissed in November 2019.

Respondent asserts that he is neither a danger to the community nor a flight risk. He first highlights that his criminal conviction was one for conspiracy and did not involve violence, and that did not have any direct contact with the victims in the scheme, but was rather working behind the scenes. Respondent cooperated with law enforcement and provided valuable information about other members of the scheme that law enforcement is currently using to build a bigger case against the ringleaders. *See Bond Ex. 4, Tab H.*

Adebodun IDOWU
204-892-773
Page 4 of 5

Respondent next highlights that he is not a flight risk because he has family ties in the United States, stable employment, and has resided in the United States for over seven years. His wife and family friend were present at Respondent's bond hearing, and if he were released from detention he would return to his family home in Newark, NJ. Respondent also has several medical problems, limiting his ability to flee and evade law enforcement. Although Respondent's appeal to the BIA was dismissed, he has appealed his case to the Third Circuit Court of Appeals. He contends that these significant equities outweigh his negative factors.

In making a decision, the Court considers the totality of the evidence. The Court recognizes that Respondent has many positive factors that mitigate flight risk issues, including that he has a USC wife and stepchild, stable employment, and has lived in the United States for over seven years. The Court will note its only concern that Respondent is a flight risk stems from the fact that he does not appear to have a clear avenue to relief from removal. Respondent only real avenues for relief, withholding of removal, was denied by the Immigration Judge, and that denial was upheld by the BIA. The Court recognized that Respondent has an appeal pending at the Third Circuit, but he has many hurdles to overcome in order to obtain relief.

However, the Court need not reach the issue of flight risk, as the Court finds that DHS has met their burden in showing Respondent is a danger to the community. Respondent pleaded guilty to money laundering in 2017. *See* Bond Ex. 2, Tab B. Of leading concern to the Court is the fact that Respondent's criminal conduct involved a high level of fraud and deception. The victims of Respondent's scheme were actual individuals who suffered significant harm when their money was taken from them. While this offense is not violent, it is still considered dangerous. The nature and recency of Respondent's criminal arrest leads the Court to determine that he poses a danger to the community, despite his mitigating factors of family ties and employment. After reviewing and assessing all these factors, the Court must find that Respondent is a danger to the community.

Therefore, based on the totality of the evidence of record, the Court finds that DHS has met its burden in demonstrating that Respondent is a danger to the community. As such, the Court finds that Respondent is properly detained and declines to set bond in his case. *Matter of Fatahi*, 26 I&N Dec. 791 (BIA 2016); *Matter of Urena*, 25 I&N Dec. 140 (BIA 2009); *see also Matter of Guerra*, 24 I&N Dec. 37. As the Court finds Respondent to be a danger, the Court need not address whether Respondent is a flight risk. *See Drysdale*, 20 I&N Dec. at 817-18 (finding that only when an alien demonstrates that he does not pose a danger to the community should an Immigration Judge determine the extent of flight risk the alien poses); *see also Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018).

Accordingly, the following order will be entered:

ORDER:

IT IS HEREBY ORDERED THAT Respondent's request for custody redetermination is **DENIED**.

1-28-2020
DATE


Kuyomars "Q" Golparvar
U.S. Immigration Judge

Adebodun IDOWU
204-892-773
Page 5 of 5

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL ☒ (M) PERSONAL SERVICE (P)
TO: ☐ ALIEN ☐ ALIEN c/o Custodial Officer ☒ ALIEN's ATT/REP ☒ DHS
DATE: 1/29/20 BY: _____ COURT
STAFF KC

Attachment(s): ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☐ Other



**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
YORK IMMIGRATION COURT**

**RESPONDENT
EXHIBIT**

5

Respondent Name:
STUBBS, COURTNEY

Alien Registration Number:
042257832

Riders:

Address:
C/O PIKE ICE
LORDS VALLEY, PA 18428

In Custody Redetermination Proceedings

Attorney Name:

Date: 01/13/2020

Attorney Address:

,

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

☒ Denied, because:

The Third Circuit Court of Appeals dismissed the respondent's petition on jurisdictional grounds 12/20/2019. The Third Circuit Court of Appeals denied respondent's request for a stay of removal in the same order. The respondent is subject to an administratively final order of removal. As removal appears imminent, the respondent is not entitled to a hearing under Guerrero-Sanchez. His request for bond to be set pursuant to Guerrero-Sanchez is denied.

☐ Granted. It is ordered that Respondent be:

☐ released from custody on his own recognizance.

☐ released from custody under bond of \$

.

☐ other:

☐ Other:

Appeal: Department of Homeland Security:

☒ waived ☐ reserved

Respondent:

☐ waived ☒ reserved

Appeal Due: 02/12/2020

A handwritten signature in black ink, appearing to read "Jack Weil". The signature is fluid and cursive, with the first name "Jack" and last name "Weil" clearly distinguishable.

Immigration Judge: Weil, Jack 01/13/2020

Certificate of Service

This document was served:

Via: ☒ M] Mail | ☐ P] Personal Service | ☐ E] Electronic Service

To: ☐ Alien | ☒ M] Alien c/o custodial officer | ☐ Alien's atty/rep. | ☐ E] DHS

By: Weil, Jack , Court Staff

Date: 01/13/2020

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
YORK, PENNSYLVANIA

File: A201-744-570

October 10, 2019

In the Matter of

MEILING LIN

RESPONDENT

)
) IN REMOVAL PROCEEDINGS
)
)

CHARGES:

APPLICATIONS:

ON BEHALF OF RESPONDENT: PRO SE

ON BEHALF OF DHS: JOHN STAPLES

RECEIVED
DHS ICE
2019 NOV 26 PM 12:07
OFFICE OF THE
CHIEF COUNSEL
YORK

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is an adult native and citizen of China. The respondent admitted factual allegations 1 through 4 as contained in the Notice to Appear, and concedes that she is removable as charged under Section 212(a)(7)(1)(i) of the Act. Based on the respondent's admissions and concession, I find that the factual allegations contained in the Notice to Appear have been established, and I conclude as a matter of law that the removal charge is sustained. The respondent is removable as charged. The Court directed China as the country of removal. The respondent is seeking relief in the forms of asylum, withholding, and protection under the Convention Against Torture.

The record consists of the respondent's testimony and she was the sole witness in addition to Exhibits 1 through 3. All documentary evidence was admitted without objection, and has been considered by the Court, irrespective of whether it is specifically mentioned or not. The Court has familiarized itself with the record of proceeding in its entirety. As a housekeeping matter, the Court notes that the respondent asked for more time at the commencement of her hearing today. She said she was not feeling well and her family member was looking for an attorney for her. DHS voiced its opposition to the request and the Court denied it, based on not finding good cause. The respondent has been in detention for six months. She had a credible fear interview in May wherein she said she had an attorney. She also said she had an attorney that helped her with her asylum application, and either he was not that great or he did not want to come. Later, the respondent said her family member had already hired an attorney for her case, contradicting her earlier statement that the family was only looking for an attorney. The Court did not find the respondent's request to be made in good faith, given that she has had ample time to hire an attorney, has actually already hired one, and has had the help of her family to get her into the U.S. with the aid of a smuggler. She was on notice of today's merits hearing for almost two months and given a call-up deadline of September 17.

The Court asked about the respondent's health, and she said she was not on any type of medications, but she is anemic. The Court assured her that it was normal to feel nervous, however, if the respondent felt unwell, the Court would stop to give her a break. She simply needed to let me know. The respondent otherwise appeared normal and was able to converse and testify in full health without any apparent difficulty. She was also given a bottle of water and the courtroom officer assured the Court that the temperature of the courtroom was fine. The respondent was

again told that she could take a break if she needed one, and even after parts of her testimony the Court did inquire again about her health. The respondent did not display any worrisome aspect of health that would give the Court pause in continuing with her hearing. After the respondent realized that the Court was going to continue with her hearing, and after having benefitted from the aid of the Mandarin interpreter for about 15 minutes, the respondent asked for a new interpreter. She said she understood the Court's interpreter's normal conversation, but being from the Fujian province, she preferred someone with her same dialect. The Court inquired into the issues of fluency between the parties. The respondent said that she had understood the interpreter, Mr. Huynh, so far, and Mr. Interpreter had understood her so far. She was advised that if there were any areas of interpretation she was not fluent in, she should stop and apprise the Court so she could receive clarification and where the interpreter could rephrase the question to the respondent. The respondent then asked for an opportunity to call her family, saying that she needed to get documents. She spoke confusingly about whether or not documents were, in fact, already requested or received. The Court was not in receipt of documents, but told the respondent that it would discuss with her during her testimony what documents she had requested or believed she would have received. Based on all of this, the Court concludes and apprised the respondent of the opinion that the respondent did not want to proceed with her hearing today and was seeking unnecessary delay.

ADDENDUM

Both parties will be provided a copy of what has been styled the addendum of law, asylum, withholding, and CAT. This document has also been placed in the record of proceeding and is hereby incorporated by reference throughout this decision for all intents and purposes.

ANALYSIS

I. Credibility

The first issue to address is credibility. The Court will not make an adverse credibility finding, but there are several key inconsistencies in the respondent's testimony and Asylum Office interview that are troubling. Additionally, the respondent, as stated above, seemed unduly nervous. She was highly non-responsive, even after being asked to listen to the question and provide in direct and specific answers, and even after being asked the same question multiple times. Towards the end of her testimony she was overly dramatic and seemed to be embellishing details of her story. As to the inconsistencies, the respondent testified that after she was detained by the local police, she was beaten up by one of the prisoners. She said the prisoner was asking the respondent to massage her, but the respondent did not do it. She said the prisoner kicked her and hit her, and then some other people came over. There were about three persons and this went on for a few minutes. In her asylum office interview, the respondent said that it was two drug dealers that wanted her to massage them. The respondent could not answer with any certainty if there were two or three assailants. She testified to injuries in the form of bruises all over her body, but she told the Asylum Officer that she was "beaten half to death." These are two different versions of the same event. This is important, because this is the significant harm the respondent faced. Additionally, the respondent was unable to answer clearly questions like how did you celebrate Christmas? She seemed to struggle to figure out what to say. On cross-examination by the Assistant Chief Counsel for DHS, the respondent answered in this exchange as follows. Are you any specific denomination of Christian? Answer: We just call it Christian. What is your favorite part of the Bible? Answer: Because of the limited language, I only read the part about how to pray and Jesus' background.

Question: Can you name any part of the Bible to me? Answer: I do not understand completely, I just do worshipping, praying. This is similar to answers she gave the Asylum Officer who interviewed her. She was asked: What is your religion, if any? Answer: My religious belief is Jesus. Question: I understand you were giving me a religious figure. What is the religion associated to Jesus? Answer: It is underground church, church in the village. Question: Ma'am, do you know the name of your religion that you are stating is your religion? Answer: Are you asking about their names? Question: Ma'am, I am asking about the name of your religions that you are associated to. Answer: My religious belief. We believe in Jesus. It is called Love Church. She said things that didn't make sense. When asked why she didn't bring important documents with her when she knew she was leaving China to board a plane and fly to Mexico and be smuggled into the U.S., she said she dared not bring it with her because she was afraid she would lose it.

Finally, it seemed that she was embellishing her story at the end when it became apparent to her that her case was coming to a close. She started providing more information, without being asked, about how the police leader "pretty much hates the respondent and everything about her." She added the detail that she threatened to sue him in court. She painted a much more draconian image of him, not just as a police leader who had slapped her, but in connection to her answer as to why she could not relocate, that this was a person she was still afraid of, and her sister had said this person "is a very powerful and bad person, and he can do many things." In other words, she was bolstering her claim when it was convenient for her to do so. One other unusual area of evidence provided by the respondent's testimony, is that she and her husband were physically living separately from one another since August of 2018 until just a few days before she left for Mexico. She said that he and his female cousin had

tricked and lured the respondent into a trap, depriving her of significant savings money. He moved out and took up with his cousin, and the respondent believes they were in a relationship. When asked if she and her husband ever repaired their relationship, the respondent said no, "it's still no good." She was planning her exit from China from as early as January 2019, during this time of physical separation. Also, the respondent and her son had tried to come into the U.S. on a tourist visa in 2015 when "their living condition was good." This is admittedly not her first attempt to come into the U.S., and what it appears to be is that the reason the respondent has to come into this country is something other than simply fearing persecution for her religious beliefs. On this record, I simply cannot find the respondent credible. However, for the purposes of making a complete and thorough evaluation of this case, I assume that the documents the respondent claimed she would have obtained were a part of the record and are credible. These documents include a warrant for her arrest since she has been missing from China and not reported to the local police station authority monthly as she claims to have required to have done, a medical record in the form of a hospital visit sometime around December 23 or 24, a receipt of the bail money paid by the respondent's sister to secure her release, the respondent's household registration, and marriage certificate. Assuming the respondent is partially credible as to the reasons she fears returning to China, the Court will analyze her claim and decide it on other grounds.

ASYLUM

Based on the evidentiary record, I conclude, as a matter of law, that the respondent has not met her burden of establishing that she is eligible for the relief of asylum. The issues before the Court with regard to the respondent's applications for relief are, (1) whether the respondent experienced harm that rises to the level of persecution, (2) whether persecution was on account of a protected ground, (3) whether

the respondent demonstrated a well-founded fear on account of a protected ground, and (4) whether the respondent has shown that she will more likely than not be tortured in China with the consent or acquiescence of the government.

HARM

The basis of the respondent's claim is that she was arrested at a house church gathering on December 16, 2018, and detained for seven days. She states that she had become a Christian approximately four months earlier and had attended six or seven church meetings. Of the 20 people who were at the gathering on the 16th of December, 18 were arrested, including the respondent. Of the ones who were arrested, the respondent was the only one held for seven days, and the other 17 members are still living in China to this day. The respondent was given food and water and was interrogated on the third day. She said her release was contingent upon her sister being able to post the bail money, which was done on the seventh day of the respondent's detention. The only physical harm the respondent suffered by the police is that she was slapped by the lead police officer when she asked why she was being arrested. The other harm the respondent suffered has been discussed above in the credibility section, and the Court does not find the respondent's account of that harm by her fellow cellmates to be credible. It is not believable that after such a traumatic incident, the respondent would not know if she were assaulted by two or three people. She also provided conflicting versions of the level of harm experienced as a result of the assault, and she testified, somewhat incredibly, that a week later she was seeking medical attention for bruises. However, in connection with that hospital visit, the respondent said that the doctor said her bruises just needed some rubbing oil, and there was another problem the respondent had with her eardrum, and therefore the Court finds that that would have been credible. But that harm, assuming arguendo it is true

that the respondent suffered some harm by her cellmates, is not the basis of her claim and is not included on the scales as a weight in the Court's analysis. That was not harm on account of her religion, that was the unfortunate incidental result of being detained with criminals. The harm here that would have been on account of her religion, would be the arrest, the seven days' detention, and the slap. This is not enough to meet her burden as to persecution. On this record, there is no past persecution, even viewing the evidence in the light most favorable to the respondent. The harm that the respondent experienced is unfortunate, but it simply does not rise to the level of persecution. It is well-established law that persecution within the meaning of the Act does not encompass all treatment that society regards as offensive, unfair, unlawful, or unconstitutional.

WELL-FOUNDED FEAR

Since the respondent has not shown past persecution, there is no presumption of a well-founded fear of future persecution, and the Court finds that her fear is neither well-founded nor objective. Additionally, the respondent has not met her burden to show that she cannot successfully relocate, China being a country of 1.4 billion people and the respondent having been detained at her local police station on one occasion. Granted, there is a possibility the local police would look for her if she returned to Fujian, although even this is somewhat refutable simply on the fact that the respondent lived in Fujian for two months without the police persecuting her or torturing her after her detention, and the other church members who were arrested continue to live there. The respondent would have had to show that she could not internally relocate before the Court would credit her with a well-founded fear of future persecution. There is insufficient evidence on this record to so show. On this evidence, she cannot demonstrate that her fear of persecution is well-founded, and her request for asylum will be denied.

WITHHOLDING OF REMOVAL

The respondent also seeks relief in the form of withholding of removal.

Unlike asylum, withholding of removal is not discretionary. Thus, if a respondent meets her burden of proof, the Court must grant the relief. Withholding of removal has a higher standard, as a respondent must demonstrate a clear probability that she would face harm on the basis of a protected ground. With respect to a claim based on the same purported protected ground, an applicant who does not satisfy the asylum requirements, necessarily fails to meet the higher burden of proof necessary for withholding of removal. The respondent has failed to meet the lower standard of eligibility for asylum, so she cannot meet the higher standard for withholding. Consequently, the Court will deny this application as well.

CONVENTION AGAINST TORTURE

It would appear that an independent analysis of the CAT claim would be required only where there is evidence that a respondent would face torture, her reasons unrelated to her unsuccessful claims for asylum and withholding of removal. The respondent has not presented evidence of a claim for relief unrelated to her underlying claims for asylum and withholding of removal. Additionally, even if the respondent had asserted another reason, based on the available evidence it is not more likely than not that the respondent would be tortured if returned to China. There was no evidence of torture on this record. Thus, the Court will deny CAT relief.

ORDER

IT IS ORDERED that the respondent's application for asylum be and hereby is denied.

IT IS ORDERED that the respondent's application for withholding be and hereby is denied.

IT IS ORDERED that the respondent's application for relief in the form of protection under the Convention Against Torture be and hereby is denied.

The respondent is ordered removed to China.

MARIUM S. UDDIN
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE MARIUM S. UDDIN,
in the matter of:

MEILING LIN

A201-744-570

FORT WORTH, TEXAS

was held as herein appears, and that this is the original transcript thereof for the file of
the Executive Office for Immigration Review.



JESSICA N KENTZELL (Transcriber)

Deposition Services, Inc. -3

NOVEMBER 12, 2019

(Completion Date)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
YORK, PA

FILE: A208-171-469

IN THE MATTER OF:

JUAREZ-JUAREZ, RODOLFO

RESPONDENT

IN REMOVAL PROCEEDINGS

Attg mahon

ORDER OF THE IMMIGRATION JUDGE
WITH RESPECT TO CUSTODY

Request having been made for a change in the custody status of respondent pursuant to 8 CFR 236.1(c), and full consideration having been given to the representations of the Department of Homeland Security and the respondent, it is hereby

 ORDERED that the request for a change in custody status be denied.

☒ ORDERED that the request be granted and that respondent be:

 released from custody on his own recognizance

☒ released from custody under bond of \$ 5,000

☒ OTHER Flight Risk

Copy of this decision has been served on the respondent and the Department of Homeland Security.

APPEAL: waived - reserved

YORK -- YORK COUNTY PRISON

Date: Oct 25, 2018

by both

[Signature]
KUYOMARS Q. GOLPARVAR
Immigration Judge

XS

Andrew Mahon, Esq.
Law Office of Mattes & Mahon
132 East Chestnut Street
Lancaster, PA 17602
tel. (717) 299-8877
fax (717) 299-1535

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
YORK, PENNSYLVANIA**

In the Matter of	)	
	)	File No. A 208-171-469
JUAREZ JUAREZ, Rodlofo	)	
	)	In Bond Proceedings
Respondent	)	
	)	

Immigration Judge: Not Assigned

Next Hearing: Not Set

MOTION FOR CUSTODY REDETERMINATION

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
YORK, PENNSYLVANIA**

	)	
In the Matter of	)	
	)	File No. A 208-171-469
JUAREZ JUAREZ, Rodolfo	)	
	)	In Bond Proceedings
Respondent	)	
	)	

Immigration Judge: Not Assigned

Next Hearing: Not Set

MOTION FOR CUSTODY REDETERMINATION

1. The respondent, Rodolfo Juarez Juarez, through counsel, Andrew Mahon, Esq., hereby moves that this Honorable Court set a custody redetermination hearing and release him on a reasonable bond.
2. The Department of Homeland Security (DHS) is currently holding the respondent in immigration custody at the York County Prison.
3. Counsel will appear telephonically by cell phone at the following number—
610-585-8454.
4. **Wherefore**, this Court should schedule the case for a custody redetermination hearing.

Respectfully submitted:

s/Andrew Mahon
Andrew Mahon, Esq.
The Law Office of Troy J. Mattes
132 East Chestnut Street
Lancaster, PA 17602
tel. (717) 299-8877
fax (717) 299-1535

Date: March 24, 2020

CERTIFICATE OF SERVICE

CASE NAME: **JUAREZ JUAREZ, Rodlofo**
CASE NUMBER: **A 208-171-469**

I HEREBY CERTIFY that on this 24th of March 2020, I caused to be served:

1) Motion

_____ By placing a true copy thereof in a sealed envelope, with postage there on fully prepaid and causing the same to be mailed by first-class mail to the person at the address set forth below.

_____ By causing to be personally delivered a true copy thereof to the person at the address set forth below.

_____ By FEDERAL EXPRESS/UNITED PARCEL SERVICE/EXPRESS MAIL to the person at the address set forth below.

_____ By certified mail - return receipt requested - to the person at the address set forth below.

XX By e-service.

ADDRESS OF THE PERSON BEING SERVED

☒ Office of Chief Counsel
OCC / DHS / ICE
346
2350 Freedom Way
Suite 254
York, PA 17402

☐ Office of Chief Counsel ICE
ICE/Litigation Service, Suite
900 Market Street
Philadelphia, PA 19107

I declare under penalty of perjury that the foregoing is true and correct. Executed on the 24th day of March 2020.

s/ Andrew Mahon
Andrew Mahon, Esq.
Attorney for Respondent

**United States Department of Justice
Executive Office for Immigration Review
Immigration Court
York, Pennsylvania**

In the Matter of:
JUAREZ JUAREZ, Rodlofo

A Number:
A 208-171-469

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the respondent's Motion for Custody Redetermination, it is
HEREBY ORDERED that the motion be

☐ **GRANTED** ☐ **DENIED** because:

- ☐ DHS does not oppose the motion.
- ☐ The respondent does not oppose the motion.
- ☐ A response to the motion has not been filed with the court.
- ☐ Good cause has been established for the motion.
- ☐ The court agrees with the reasons stated in the opposition to the motion.
- ☐ The motion is untimely per _____.
- ☐ Other:

Deadlines:

- ☐ The application(s) for relief must be filed by _____.
- ☐ The respondent must comply with DHS biometrics instructions by _____.

Date

Immigration Judge

Certificate of Service

This document was served by: [] Mail [] Personal Service

To: ☐ Alien ☐ Alien c/o Custodial Officer ☐ Alien's Atty/Rep ☐ DHS

Date: _____ By: Court Staff _____

**United States Department of Justice
Executive Office for Immigration Review
Immigration Court
York, Pennsylvania**

In the Matter of:
JUAREZ JUAREZ, Rodlofo

A Number:
A 208-171-469

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the respondent's Motion for Custody Redetermination, it is
HEREBY ORDERED that the motion be

☐ **GRANTED** ☐ **DENIED** because:

- ☐ DHS does not oppose the motion.
- ☐ The respondent does not oppose the motion.
- ☐ A response to the motion has not been filed with the court.
- ☐ Good cause has been established for the motion.
- ☐ The court agrees with the reasons stated in the opposition to the motion.
- ☐ The motion is untimely per _____.
- ☐ Other:

Deadlines:

- ☐ The application(s) for relief must be filed by _____.
- ☐ The respondent must comply with DHS biometrics instructions by _____.

Date

Immigration Judge

Certificate of Service

This document was served by: ☐ Mail ☐ Personal Service
To: ☐ Alien ☐ Alien c/o Custodial Officer ☐ Alien's Atty/Rep ☐ DHS

Date: _____ By: Court Staff _____

**United States Department of Justice
Executive Office for Immigration Review
Immigration Court
York, Pennsylvania**

In the Matter of:
JUAREZ JUAREZ, Rodlofo

A Number:
A 208-171-469

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the respondent's Motion for Custody Redetermination, it is
HEREBY ORDERED that the motion be

☐ **GRANTED** ☐ **DENIED** because:

- ☐ DHS does not oppose the motion.
- ☐ The respondent does not oppose the motion.
- ☐ A response to the motion has not been filed with the court.
- ☐ Good cause has been established for the motion.
- ☐ The court agrees with the reasons stated in the opposition to the motion.
- ☐ The motion is untimely per _____.
- ☐ Other:

Deadlines:

- ☐ The application(s) for relief must be filed by _____.
- ☐ The respondent must comply with DHS biometrics instructions by _____.

Date

Immigration Judge

Certificate of Service

This document was served by: ☐ Mail ☐ Personal Service
To: ☐ Alien ☐ Alien c/o Custodial Officer ☐ Alien's Atty/Rep ☐ DHS

Date: _____

By: Court Staff _____



**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
YORK IMMIGRATION COURT**

**RESPONDENT
EXHIBIT**

8

Respondent Name:
GOMEZ-LOPEZ, CATALINO DOMINGO

Alien Registration Number:
215927752

Riders:

Address:
C/O YORK ICE
YORK, PA 17402

In Custody Redetermination Proceedings

Attorney Name:
Fist, Petra D.

Date: 02/20/2020

Attorney Address:
1209 Kirkwood Hwy.
Wilmington, DE 19805

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

☒ Denied, because:

The Respondent continues to pose a risk and danger to the community given, among other factors, his past criminal convictions and his law enforcement contacts.

☐ Granted. It is ordered that Respondent be:

☐ released from custody on his own recognizance.

☐ released from custody under bond of \$

.

☐ other:

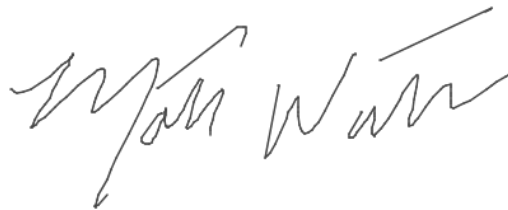
☐ Other:

Appeal: Department of Homeland Security:
Respondent:

☐ waived ☐ reserved

☐ waived ☐ reserved

Appeal Due:

A handwritten signature in black ink, appearing to read "Matthew Watters", is positioned above the typed name of the Immigration Judge.

Immigration Judge: Watters, Matthew 02/20/2020

Certificate of Service

This document was served:

Via: ☐ M] Mail | ☐ P] Personal Service | ☒ E] Electronic Service

To: ☐ Alien | ☐ Alien c/o custodial officer | ☒ E] Alien's atty/rep. | ☒ E] DHS

By: Weaver, Pamela , Court Staff

Date: 02/20/2020

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
YORK, PA

FILE: A075-555-747

IN THE MATTER OF:

PRATT, HENRY

RESPONDENT

IN REMOVAL PROCEEDINGS

Atty Conklin

ORDER OF THE IMMIGRATION JUDGE
WITH RESPECT TO CUSTODY

Request having been made for a change in the custody status of respondent pursuant to 8 CFR 236.1(c), and full consideration having been given to the representations of the Department of Homeland Security and the respondent, it is hereby

☒ ORDERED that the request for a change in custody status be denied.

☐ ORDERED that the request be granted and that respondent be:

☐ released from custody on his own recognizance

☐ released from custody under bond of \$ _____

☒ OTHER Danger + Significant Flight Risk

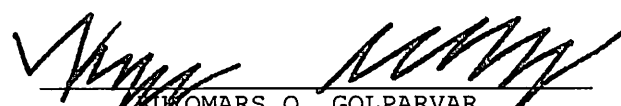
Copy of this decision has been served on the respondent and the Department of Homeland Security.

APPEAL: waived -- reserved

by Respondent

YORK -- YORK COUNTY PRISON

Date: May 23, 2018


RUYOMARS Q. GOLPARVAR
Immigration Judge

XS

appeal
due by 6-22-18

No. 19-1641

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

HENRY PRATT,

Petitioner-Appellant,

v.

CLAIRE DOLL, WARDEN,

Respondents-Appellees.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DECLARATION OF DEVIN VENDETTI

I hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

I am a Deportation Officer for the U.S. Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO"), and make this declaration in regard to Henry Pratt, Petitioner, DHS file A075-555-747, based upon information and belief derived from an inspection of DHS records and my own personal knowledge of the case.

1. I am currently stationed at the ERO office located at Allenwood, Pennsylvania.
2. Petitioner, a native and citizen of Liberia, is currently in the custody of U.S. Immigrations and Customs Enforcement at the Clinton County Correctional Facility, in Clinton County, Pennsylvania.

3. Petitioner was granted asylum by an Immigration Judge in 2002, and adjusted status to Lawful Permanent Resident in 2008. He was placed into removal proceedings by service of a Notice to Appear, Form I-862, on February 13, 2017. On September 14, 2017, the Immigration Court in York, Pennsylvania ordered him removed from the United States to Liberia. Petitioner appealed this decision to the Board of Immigration Appeal, who on February 27, 2018 dismissed his appeal. Petitioner has filed multiple Petitions for Review before the Third Circuit Court of Appeals with the most recent under docket 19-2034 being dismissed on July 12, 2019. It is expected that the mandate for that dismissal will be issued shortly.

4. In the meantime, ERO has taken steps to obtain a travel document for Petitioner from the Liberian Embassy forwarding a travel document request packet to Liberian Authorities on March 8, 2018.

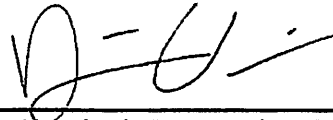
5. On October 2, 2019, Petitioner was scheduled for a tele video interview with the Liberian Embassy. After being brought into the ICE office at the Clinton County Correctional Facility for the interview, Petitioner did not cooperate with ICE officers and refused to meet with Embassy officials. ICE is currently attempting to reschedule Petitioner's interview with the Liberian Embassy.

6. Petitioner would be scheduled for removal once all stays of removal have been vacated and a travel document is issued.

7. Therefore, there is a significant likelihood of removal in the reasonably foreseeable future.

Dated: York, Pennsylvania

12/18/19



Devin Vendetti, Deportation Officer
U.S. Immigration and Customs Enforcement
Enforcement and Removal Operations
Allenwood, Pennsylvania

RESPONDENT
EXHIBIT

10

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
YORK, PA

FILE: A047-365-390

IN THE MATTER OF:

HILLOCKS, DEXTER ANTHONY

RESPONDENT

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE
WITH RESPECT TO CUSTODY

Request having been made for a change in the custody status of respondent pursuant to 8 CFR 236.1(c), and full consideration having been given to the representations of the Department of Homeland Security and the respondent, it is hereby

_____ ORDERED that the request for a change in custody status be denied.

_____ ORDERED that the request be granted and that respondent be:

_____ released from custody on his own recognizance

X released from custody under bond of \$ 18,000

X OTHER - ATD AT DHS DISCRETION.

- NO NEGATIVE CONTACT WITH LAW ENFORCEMENT.
- OBEY ALL LAWS & COURT ORDERS.

Copy of this decision has been served on the respondent and the Department of Homeland Security.

APPEAL: waived / ^{BOTH} reserved + APPEAL DUE: 10-16-19

YORK -- PIKE COUNTY PRISON

Date: Sep 16, 2019

Jack H. Weil
JACK H. WEIL

Immigration Judge

XS

DJF:jms

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BHARATKUMAR G. THAKKER, :		
et al.,	:	NO. 1:CV-20-0480
Petitioner-Plaintiffs	:	
	:	(Jones, J.)
v.	:	
	:	
CLAIR DOLL, in his official	:	
Capacity as Warden of York	:	
County Prison, et al.,	:	
Respondents-Defendants	:	(Filed Electronically)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers.

That on March 30, 2020, she served a copy of the attached

**EXHIBITS IN SUPPORT OF RESPONDENTS' RESPONSE AND
OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS AND
MOTION FOR TEMPORARY RESTRAINING ORDER AND OR
PRELIMINARY INJUNCTION**

by electronic service pursuant to Local Rule 5.7 and Standing Order 04-6, ¶12.2 to the following individual(s):

Addressees:

Witold J. Walczak vwalczak@aclupa.org	Carla G Graff carla.graff@dechert.com	Erika Nyborg-Burch enyborg-burch@aclupa.org
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Will W. Sachse will.sachse@dechert.com	John Grogan jgrogan@langergrogan.com	

s/Joanne M. Sanderson
Joanne M. Sanderson
Assistant United States Attorney